

**EXHIBITS A-E OF DECLARATION OF NEIL J. OXFORD
IN SUPPORT OF THE MEMORANDUM OF
MOVANTS IN OPPOSITION TO THE MOTION IN LIMINE OF BARCLAYS
CAPITAL INC. FOR AN ORDER EXCLUDING THE EXPERT TESTIMONY OF
DANIEL MCISAAC RELATING TO EXCHANGE TRADED
DERIVATIVES (“ETDs”) AND ETD MARGIN**

EXHIBIT A

EXECUTION COPY

ASSET PURCHASE AGREEMENT
AMONG
LEHMAN BROTHERS HOLDINGS INC.
LEHMAN BROTHERS INC.
LB 745 LLC
AND
BARCLAYS CAPITAL INC.

Dated as of September 16, 2008



TABLE OF CONTENTS

	Page
Article I	DEFINITIONS..... 1
1.1	Certain Definitions..... 1
1.2	Other Definitional and Interpretive Matters 10
Article II	PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES..... 11
2.1	Purchase and Sale of Assets..... 11
2.2	Excluded Assets..... 11
2.3	Assumption of Liabilities..... 11
2.4	Excluded Liabilities 12
2.5	Cure Amounts 13
2.6	Further Conveyances and Assumptions..... 13
2.7	Bulk Sales Laws..... 14
Article III	CONSIDERATION 14
3.1	Consideration 14
3.2	Payment of Cash Amount 14
3.3	Adjustment to Cash Amount..... 14
Article IV	CLOSING AND TERMINATION..... 15
4.1	Closing Date..... 15
4.2	Deliveries by Seller..... 15
4.3	Deliveries by Purchaser 15
4.4	Termination of Agreement..... 16
4.5	Procedure Upon Termination..... 16
4.6	Effect of Termination..... 16
Article V	REPRESENTATIONS AND WARRANTIES OF SELLER..... 17
5.1	Organization and Good Standing..... 17
5.2	Authorization of Agreement 18
5.3	Conflicts; Consents of Third Parties 18
5.4	Title to Purchased Assets 19
5.5	Compliance with Laws; Permits..... 19
5.6	No Other Representations or Warranties; Schedules..... 20

TABLE OF CONTENTS
(continued)

		Page
Article VI	REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	20
6.1	Organization and Good Standing.....	20
6.2	Authorization of Agreement.....	20
6.3	Conflicts; Consents of Third Parties.....	21
6.4	Financial Capability.....	21
6.5	Condition of the Business.....	21
Article VII	BANKRUPTCY COURT MATTERS.....	22
7.1	[Reserved].....	22
7.2	Bankruptcy Court Filings.....	22
Article VIII	COVENANTS.....	22
8.1	Access to Information.....	23
8.2	Conduct of the Business Pending the Closing.....	23
8.3	Consents.....	25
8.4	Regulatory Approvals.....	26
8.5	Further Assurances.....	27
8.6	Confidentiality.....	27
8.7	Preservation of Records.....	28
8.8	Publicity.....	28
8.9	Trademark License.....	28
8.10	Use of Purchased Intellectual Property.....	29
8.11	Deferred Transfers.....	30
8.12	Release of Guarantees.....	32
8.13	Transition Services.....	32
8.14	Subleases.....	32
8.15	Landlord Notice.....	33
8.16	Artwork.....	33
Article IX	EMPLOYEES AND EMPLOYEE BENEFITS.....	33
9.1	Employee Benefits.....	33
Article X	CONDITIONS TO CLOSING.....	35

TABLE OF CONTENTS
(continued)

	Page
10.1 Conditions Precedent to Obligations of Purchaser	35
10.2 Conditions Precedent to Obligations of Seller	36
10.3 Conditions Precedent to Obligations of Purchaser and Seller	36
10.4 Frustration of Closing Conditions.....	37
Article XI [RESERVED]	37
Article XII TAXES.....	37
12.1 Transfer Taxes	37
12.2 Prorations.....	37
12.3 Purchase Price Allocation.....	37
12.4 Adjustment to Purchase Price.....	37
Article XIII MISCELLANEOUS	38
13.1 Expenses	38
13.2 Injunctive Relief.....	38
13.3 Submission to Jurisdiction; Consent to Service of Process	38
13.4 Waiver of Right to Trial by Jury.....	39
13.5 Entire Agreement; Amendments and Waivers	39
13.6 Governing Law	39
13.7 Notices	39
13.8 Severability	41
13.9 Binding Effect; Assignment.....	41
13.10 Non-Recourse.	41
13.11 Counterparts.....	41
13.12 Scope of Purchased Assets.....	41

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of September 16, 2008 (this "Agreement"), among LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation ("LBHI"), LEHMAN BROTHERS INC., a Delaware corporation ("LBI") and, together with LBHI, the "Seller"), LB 745 LLC, a Delaware limited liability company ("745"), and BARCLAYS CAPITAL INC., a Connecticut corporation ("Purchaser").

WITNESSETH:

WHEREAS, LBHI is a debtor-in-possession under title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), and filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on September 15, 2008 in the United States Bankruptcy Court for the Southern District of New York (Manhattan) (the "Bankruptcy Court") (Case No. [08-13555]) (the "Bankruptcy Case");

WHEREAS, the Seller and its Subsidiaries presently conduct the Business;

WHEREAS, Seller and 745 desire to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Seller and 745, pursuant to Sections 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities, all as more specifically provided herein; and

WHEREAS, an Affiliate of Purchaser has agreed to provide to LBHI a debtor-in-possession facility (the "DIP Facility") and has agreed to provide to LBI certain other financing;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms

i

“controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Breakup Fee and Competing Bid Order” means an order of the Bankruptcy Court in the form attached as Exhibit A hereto.

“Business” means the U.S. and Canadian investment banking and capital markets businesses of Seller including the fixed income and equities cash trading, brokerage, dealing, trading and advisory businesses, investment banking operations and LBI’s business as a futures commission merchant.

“Business Day” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any contract, indenture, note, bond, lease or other agreement.

“Documents” means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials related to or necessary for the conduct of the Business and the Purchased Assets in each case whether or not in electronic form.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Excluded Assets” shall mean the following assets, properties, interests and rights of Seller and its Subsidiaries:

(a) the shares of capital stock, limited liability company membership, general and limited partnership, and other equity interests, of Seller and its Subsidiaries (other than (i) the capital stock of Townsend Analytics and (ii) the capital stock or other equity interests of any other Subsidiary that Seller and Purchaser may agree prior to the entry of the Sale Order shall be a Purchased Asset);

(b) all cash, cash equivalents, bank deposits or similar cash items of LBI and its Subsidiaries (the “Retained Cash”) other than \$1.3 billion in cash, cash equivalents, bank deposits or similar cash items;

i

- (c) all intercompany receivables;
- (d) the Excluded Contracts, including any accounts receivable to the extent arising out of any Excluded Contract;
- (e) any Intellectual Property Rights that do not constitute Purchased Intellectual Property;
- (f) any (i) confidential personnel and medical records pertaining to any Excluded Employee; (ii) other books and records that LBI is required by Law to retain, including, but not limited to, books and records required to be retained by Rules 17a-3 and 17a-4 of the Exchange Act with respect to the Purchased Assets or that LBHI reasonably determines are necessary to retain including, without limitation, Tax Returns, financial statements, and corporate or other entity filings; provided, however, that Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the Business or any of the Purchased Assets; and (iv) minute books, stock ledgers and stock certificates of Subsidiaries..
- (g) any claim, right or interest of LBHI or any of its Subsidiaries in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax period (or portion thereof) ending on or before the Closing Date;
- (h) all insurance policies or rights to proceeds thereof relating to the assets, properties, business or operations of Seller or any of its Subsidiaries other than customer account insurance supplemental to SIPC coverage included in the Business;
- (i) any rights, claims or causes of action of Seller or any of its Subsidiaries against third parties relating to assets, properties, business or operations of Seller or any of its Subsidiaries (other than those primarily related to Purchased Assets) arising out of events occurring on or prior to the Closing Date;
- (j) commercial real estate investments (including commercial loans, equity investments in such commercial real estate and other commercial real estate assets and all Archstone debt and equity positions), private equity investments and hedge fund investments;
- (k) 50% of each position in residential real estate mortgage securities;
- (l) assets related to the soliciting, placing, clearing and executing of buy and sell orders for derivatives contracts by Lehman Brothers Derivative Products Inc. and all activities related or ancillary thereto;
- (m) all artwork owned by Seller and its Subsidiaries;

i

(n) all assets primarily related to the IMD Business and derivatives contracts;

(o) any assets set aside, segregated, or otherwise specifically identified as being held for the purpose of satisfying Excluded Liabilities referred to in Section 2.4(e);

(p) all real property leases of Seller and its Subsidiaries, and all rights and obligations appurtenant thereto, as set forth on Schedule 1.1(a), other than the Transferred Real Property Leases; and

(q) Lehman Commercial Paper, Inc. and any assets thereof.

"Excluded Contracts" means all of the Contracts of Seller and its Subsidiaries, other than the Purchased Contracts.

"Furniture and Equipment" means all furniture, fixtures, furnishings, equipment, vehicles, leasehold improvements, and other tangible personal property owned or used by Seller and its Subsidiaries in the conduct of the Business, including all desks, chairs, tables, Hardware, copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

"GAAP" means generally accepted accounting principles in the United States as of the date hereof.

"Governmental Body" means any government or governmental or regulatory, judicial or administrative, body thereof, or political subdivision thereof, whether foreign, federal, state, national, supranational or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private) or any self-regulatory organization, including, but not limited to, the Financial Industry Regulatory Authority.

"Hardware" means any and all computer and computer-related hardware, networks and peripherals, including, but not limited to, information and communication systems, computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"IMD Business" means the investment management business of Seller and its Subsidiaries.

"Intellectual Property Rights" means, collectively, all intellectual property and other similar proprietary rights in any jurisdiction, whether owned or held for use

i

under license, whether registered or unregistered, including without limitation such rights in and to: (i) patents and applications therefor, including continuations, divisionals, continuations-in-part, reissues, continuing patent applications, reexaminations, and extensions thereof, any counterparts claiming priority therefrom and patents issuing thereon (collectively, "Patents") and inventions, invention disclosures, discoveries and improvements, whether or not patentable, (ii) all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos, slogans, Internet domain names and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof and all common law rights thereto (collectively, "Marks"), (iii) copyrights and registrations and applications therefor and renewals and extensions thereof, and works of authorship, databases and mask work rights, and all moral rights (collectively, "Copyrights"), (iv) all Software, Technology, trade secrets and market and other data, and rights to limit the use or disclosure of any of the foregoing by any Person, and (v) all claims, causes of action and defenses relating to the enforcement of any of the foregoing.

"Intellectual Property Licenses" means (i) any grant to a third Person of any license, immunity, a covenant not to sue or otherwise any right to use or exploit, any of the Purchased Intellectual Property owned by Seller or any of its Subsidiaries, and (ii) any grant to Seller or its Subsidiaries of a license, immunity, a covenant not to sue or otherwise any right to use or exploit any Purchased Intellectual Property which is not owned by Seller or any of the Subsidiaries.

"Knowledge of Seller" means the knowledge after due inquiry, as of the date of this Agreement, of the senior officers and directors of Seller and its Subsidiaries.

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation (including rules of any self-regulatory organization).

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings or investigations by or before a Governmental Body.

"Liability" means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

"Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business through September 14, 2008 consistent with past practice.

"Permits" means any approvals, authorizations, consents, licenses, permits, registrations or certificates of a Governmental Body.

"Permitted Exceptions" means all (i) defects, exceptions, restrictions, easements, rights of way and encumbrances of record, (ii) statutory liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings provided an appropriate reserve is established therefor; (iii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the Ordinary Course of Business; (iv) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations have not been violated; (v) title of a lessor under a capital or operating lease; (vi) Liens arising under the DIP Facility; and (vii) the terms and provisions of the ground lease and related documents affecting the property located at 745 Seventh Avenue, New York, NY (the "745 Seventh Ground Lease").

"Person" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

"Purchased Assets" means all of the assets of Seller and its Subsidiaries used in connection with the Business (excluding the Excluded Assets), including:

- (a) the Retained Cash;
- (b) all deposits (including customer deposits, security deposits for rent, electricity, telephone or otherwise and required capital deposits) and prepaid charges and expenses of Seller and its Subsidiaries associated with the Business, other than any deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Assets;
- (c) the Transferred Real Property Leases, together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof;
- (d) government securities, commercial paper, corporate debt, corporate equity, exchange traded derivatives and collateralized short-term agreements with a book value as of the date hereof of approximately \$70 billion (collectively, "Long Positions");
- (e) 50% of each position in the residential real estate mortgage securities;
- (f) the Furniture and Equipment;

i

(g) the Purchased Intellectual Property and all income, royalties, damages and payments due or payable at the Closing or thereafter relating to the Purchased Intellectual Property (including damages and payments for past or future infringements or misappropriations thereof), the right to sue and recover damages for past or future infringements or misappropriations thereof and the right to fully and entirely stand in the place of Seller in all matters related thereto;

(h) the Purchased Contracts;

(i) all Documents that are used in, held for use in or intended to be used in, or that arise in connection with, or are necessary to carry on or are related to the operation of the Business, including Documents relating to products, services, marketing, advertising, promotional materials, Purchased Intellectual Property, personnel files for Transferred Employees and all files, customer files and documents (including credit information), account agreements, books and records required to be maintained in connection with the Business under applicable Law, compliance manuals, supervisory policies and procedures, customer lists, supplier lists, records, literature and correspondence, whether or not physically located on any of the premises referred to in clause (d) above, but excluding (i) personnel files for Excluded Employees of Seller or its Subsidiaries who are not Transferred Employees, (ii) such files as may be required under applicable Law regarding privacy, (iii) Documents which Seller is not permitted to transfer pursuant to any contractual confidentiality obligation owed to any third party, and (iv) any Documents primarily related to any Excluded Assets;

(j) all Permits used by Seller in the Business to the extent assignable under applicable Law;

(k) all supplies owned by Seller and used in connection with the Business;

(l) all rights of Seller under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees, contractors and agents of Seller or its Subsidiaries or with third parties to the extent relating to the Business or the Purchased Assets (or any portion thereof);

(m) rights to "Lehman" indices and analytics that support the indices and all other indices and analytics used in the Business;

(n) general trading tools supporting the Business;

(o) the stock of Townsend Analytics and the stock, equity interests or assets of any other Subsidiary of LBI that the Seller and Purchaser may mutually agree on prior of the entry of the Sale Order and of which a notice has been provided to any statutory committee;

i

(p) the equity interests or assets (at the election of Purchaser in its sole discretion prior to the entry of the Sale Order) of Eagle Energy Management LLC;

(q) all past and present goodwill and other intangible assets associated with or symbolized by the Business, including customer and supplier lists and the goodwill associated with the Purchased Intellectual Property;

(r) Mercantile Exchange license agreements with respect to 335 South LaSalle Street, Chicago, IL and 400 South LaSalle Street, Chicago, IL; and

(s) any insurance proceeds from the occurrence after the date hereof and prior to Closing, of any casualty or event loss with respect to any Transferred Real Property Leases or any properties subject thereto.

“Purchased Contracts” means all Contracts designated as Purchased Contracts pursuant to Section 2.5.

“Purchased Intellectual Property” means the Purchased Marks and all other Intellectual Property Rights, Software and Technology throughout the world that are used in, related to, or otherwise necessary for the Business, including all Intellectual Property Rights embodied in or arising from the Purchased Assets.

“Purchased Marks” means the Mark “LEHMAN” and “LEHMAN BROTHERS” throughout the world, all other Marks throughout the world containing or incorporating the name “LEHMAN,” the Internet domain name www.lehman.com, all other Internet domain names containing or incorporating any Purchased Marks, and any other Mark throughout the world that is used in, related to, or otherwise necessary for the Business; in each case, together with all of the goodwill associated therewith and all registrations and applications for the foregoing and all common law rights thereto.

“Sale Motion” means the motion or motions of Seller, in form and substance reasonably acceptable to Purchaser and Seller, seeking approval and entry of the Breakup Fee and Competing Bid Order and Sale Order.

“Sale Order” shall be an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser and Seller approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (i) the Purchased Assets sold to Purchaser pursuant to this Agreement shall be transferred to Purchaser free and clear of all Liens (other than Liens created by Purchaser and Permitted Exceptions) and claims, such Liens and claims to attach to the Purchase Price; (ii) Purchaser has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code; (iii) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm’s length bargaining positions; (iv) the Bankruptcy Court shall

retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof as provided in Section 13.3 hereof; and (v) this Agreement and the transactions contemplated hereby may be specifically enforced against and binding upon, and not subject to rejection or avoidance by, Seller or any chapter 7 or chapter 11 trustee of Seller.

"Software" means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies and application programming interfaces, whether in source code or object code, (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, and (iv) all software-related specifications documentation including user manuals and other training documentation related to any of the foregoing.

"Subsidiary" means any Person of which a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by Seller.

"Tax Authority" means any state or local government, or agency, instrumentality or employee thereof, charged with the administration of any law or regulation relating to Taxes.

"Taxes" means (i) all federal, state, local or foreign taxes, charges or other assessments, including, without limitation, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i).

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes.

"Technology" means, collectively, all designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, business and marketing information, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, non-public or confidential information, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology.

“Transferred Real Property Leases” means the leases listed on Schedule 1.1(b) attached hereto and any rights and obligations appurtenant thereto.

1.2 Other Definitional and Interpretive Matters

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one schedule shall be deemed to have been disclosed on each other schedule. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing (as defined below), Purchaser shall purchase, acquire and accept from the Seller and 745, and Seller and 745 shall sell, transfer, assign, convey and deliver (or cause to be sold, transferred, assigned, conveyed and delivered) to Purchaser, all of Seller's and its applicable Subsidiaries' right, title and interest in, to and under the Purchased Assets free and clear of all Liens pursuant to Section 363(f) of the Bankruptcy Code.

2.2 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Seller (directly and indirectly) shall retain all right, title and interest to, in and under the Excluded Assets.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, the following Liabilities of Seller and its Subsidiaries (collectively, the "Assumed Liabilities"):

- (a) all Liabilities of Seller incurred, after the Closing, in connection with the Business;
- (b) all Liabilities of Seller under the Purchased Contracts arising after, with respect to each entity comprising Seller, the date on which such entity commenced a voluntary case or cases under Chapter 11 or Chapter 7, as the case may be, of the Bankruptcy Code;
- (c) all Liabilities assumed under Article IX;
- (d) accounts payable incurred in the Ordinary Course of Business of Seller after, with respect to each entity comprising Seller, the date on which such entity commenced a voluntary case or cases under Chapter 11 or Chapter 7, as the case may be, of the Bankruptcy Code, associated with the Business other than any accounts payable arising out of one in connection with any Excluded Contract (including, for the avoidance of doubt, (i) invoiced accounts payable and (ii) accrued but uninvoiced accounts payable);
- (e) all Transfer Taxes applicable to the transfer of the Purchased Assets pursuant to this Agreement;
- (f) all other Liabilities to the extent related to the Business, the Purchased Assets or the Transferred Employees arising after the Closing;

i

(g) all Liabilities under Transferred Real Property Leases from the date of Closing forward;

(h) all Liabilities relating to amounts required to be paid by Purchaser hereunder; and

(i) all short positions and "repos" relating to any securities or interests of the types included in the definition of "Long Positions" with a book value as of the date hereof of approximately \$69 billion (collectively, "Short Positions" and, together with the Long Positions, "Positions").

2.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, Purchaser will not assume or be liable for any Excluded Liabilities. "Excluded Liabilities" shall mean all Liabilities of Seller and its Subsidiaries to the extent they do not arise out of the Business and the following Liabilities:

(a) all Liabilities arising out of Excluded Assets, including Contracts that are not Purchased Contracts;

(b) except as otherwise provided in Article XII, all Liabilities for Taxes of Seller for any Tax periods (or portions thereof) ending on or before the Closing Date;

(c) except as otherwise provided in this Agreement and other than any cure amounts that Purchaser is required to pay pursuant to Section 2.5, Liabilities incurred in the Ordinary Course of Business existing prior to the filing of the Bankruptcy Case that are subject to compromise under the Bankruptcy Case (the "Compromised Liabilities");

(d) except as expressly assumed pursuant to Article IX hereof, any Liabilities relating to the employment, potential employment or termination of employment of any Person relating to or arising out of any period prior to the Closing, including without limitation any Liability under or relating to any employee benefit plan, program, agreement or arrangement, including in respect of equity compensation plans and tax-qualified or not tax-qualified pension or saving plans as to which the parties agree there shall be no transfer to or assumption of Liabilities by the Purchaser;

(e) all Liabilities relating to amounts required to be paid by Seller, hereunder, including upon any breach;

(f) all Liabilities under Excluded Real Property Leases and Transferred Real Property Leases other than Liabilities under Transferred Real Property Leases from the date of Closing forward; and

(g) all intercompany payables.

i

2.5 Cure Amounts. For a period of 60 days after the Closing, the Purchaser shall have the right upon notice to Seller to designate any contract related to the assets purchased from the Seller by Purchaser or its Affiliates (the "Related Contracts") as either (1) a Purchased Contract or (2) a Contract not designated as a Purchase Contract (a "Rejected Contract"). Until a Related Contract is so designated, Buyer shall be obligated to pay or cause to be paid ordinary course amounts due under such contracts in accordance with the terms thereof. If a Related Contract is designated as a Purchased Contract, such Purchased Contract shall be assigned to the Purchaser and upon such assignment Purchaser shall be obligated to pay or cause to be paid the cure amount in respect of such Purchased Contract. If a Related Contract is designated as a Rejected Contract, Purchaser shall have no further obligations in respect thereof. In the event of any dispute relating to such cure amount, Purchaser shall escrow such funds in a manner satisfactory to the court. This Section will not apply to real property leases.

2.6 Further Conveyances and Assumptions.

(a) From time to time following the Closing, Seller shall, or shall cause its Affiliates to, make available to Purchaser such data in personnel records of Transferred Employees as is reasonably necessary for Purchaser to transition such employees into Purchaser's records.

(b) From time to time following the Closing, without further consideration, Seller and Purchaser shall, and shall cause their respective Affiliates to, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged or delivered, all such further conveyances, deeds, assignments, notices, assumptions, releases, acquaintances, powers of attorney and assurances (including any notarization, authentication, legalization and consularization of the signatures of Seller's and its Subsidiaries' representatives), and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Seller Documents, and to assure fully to Seller and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement and the Seller Documents, and to otherwise make effective the transactions contemplated hereby and thereby.

(c) If any third-party consent is required for the assignment of any Intellectual Property Licenses to Purchaser and such consent cannot be obtained, then, to the extent permitted by Applicable Law, Seller shall sublicense whatever rights they are permitted to sublicense under the respective Intellectual Property Licenses, provided such sublicense is at no cost to Seller. If, however, Seller is permitted to sublicense only at a one time, fixed payment or an ongoing fee, Seller shall notify Purchaser thereof and, only if Purchaser agreed in writing to be responsible to such payment or fee, as applicable, Seller shall sublicense whatever rights it is permitted to sublicense under the respective Intellectual Property Licenses, subject to the payment or fee being paid by Purchaser.

i

2.7 Bulk Sales Laws. Purchaser hereby waives compliance by Seller and its Subsidiaries with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Purchased Assets to Purchaser.

ARTICLE III

CONSIDERATION

3.1 Consideration. The aggregate consideration for the Purchased Assets shall be (a) the Cash Amount and (b) the assumption of the Assumed Liabilities by Purchaser. The "Cash Amount" shall equal an amount in cash equal to the sum of (i) \$250 million, (ii) the appraised value (as reasonably determined by an independent, recognized appraiser) of the Lehman headquarters at 745 Seventh Avenue in New York City less a reasonable market commission that would be paid assuming a sale of such property as of the Closing, (iii) the appraised value (as reasonably determined by an independent, recognized appraiser) of the Cranford New Jersey Data Center less a reasonable market commission that would be paid assuming a sale of such property as of the Closing, and (iv) the appraised value (as reasonably determined by an independent, recognized appraiser) of the Piscataway New Jersey Data Center less a reasonable market commission that would be paid assuming a sale of such property as of the Closing. For illustrative purposes only, the parties note that as of the date hereof they expect that the Cash Amount will be approximately \$1.7 billion (less the aforementioned assumed commissions).

3.2 Payment of Cash Amount. On the Closing Date, Purchaser shall pay the Cash Amount to Seller, which shall be paid by wire transfer of immediately available funds into an account designated by Seller.

3.3 Adjustment to Cash Amount. Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including repos), that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBI's mark (book value) for such Position as of the date hereof). Purchaser shall provide reasonable supporting information to Seller with respect to such calculation of profit or loss. If the aggregate amount of all such profits exceeds the aggregate amount of all such losses (a) by up to \$500 million, Purchaser shall promptly pay Seller such net amount, or (b) by more than \$500 million, Purchaser shall promptly pay Seller the sum of \$500 million plus one-half of the excess of such net amount over \$500 million (but in no event shall Purchaser pay Seller more than \$750 million pursuant to this Section 3.3). For purposes of this Section 3.3, the time value of money shall be disregarded and no interest shall be deemed earned.

i

ARTICLE IV

CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 hereof (or the waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York 10153 (or at such other place as the parties may designate in writing) at 10 a.m (New York time) on the day of, or at Purchaser's election the Business Day following, the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the parties in writing, the Closing shall be deemed effective and all right, title and interest of Seller to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser as of 12:01 a.m. (New York time) on the Closing Date.

4.2 Deliveries by Seller. At the Closing, Seller shall deliver to Purchaser:

- (a) a duly executed, reasonably customary bill of sale in the form of Exhibit A hereto;
- (b) duly executed, reasonably customary assignment and assumption agreements (including, with respect to the 745 Seventh ground lease, all assignments that were entered into in connection with Seller's acquisition of such lease) and duly executed assignments of the U.S. and Canadian trademark registrations and applications included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. and Canadian trademark office, and general assignments of all other Purchased Intellectual Property;
- (c) a certificate, duly executed by Seller, that Seller is not a "foreign person" within the meaning of Section 1445 of the Code;
- (d) duly executed Seller Sublease and Purchaser Subleases; and
- (e) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Purchaser, as may be necessary to convey the Purchased Assets to Purchaser or as Purchaser may reasonably request, including such instruments of conveyance and transfer in form and substance comparable to the instruments of conveyance and transfer exchanged in connection with Seller's acquisition of the 745 Seventh Ground Lease.

4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver to Seller:

- (a) the Purchase Price, in immediately available funds, as set forth in Section 3.2 hereof;
- (b) a duly executed, reasonably customary assignment and assumption agreement; and
- (c) duly executed Purchaser Subleases and Seller Sublease.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

- (a) by Purchaser or Seller, if the Closing shall not have occurred by the close of business on September 24, 2008 (the "Termination Date");
- (b) by mutual written consent of Seller and Purchaser;
- (c) by Seller or Purchaser if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the parties hereto shall promptly appeal any adverse determination which is not nonappealable (and pursue such appeal with reasonable diligence);
- (d) by Purchaser upon the entry of an order by the Bankruptcy Court authorizing a Competing Transaction; or
- (e) by Purchaser if the Breakup Fee and Competing Bid Order is not approved by the Bankruptcy Court in the form attached hereto as Exhibit A.

4.5 Procedure Upon Termination. In the event of termination and abandonment by Purchaser or Seller, or both, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other party or parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Purchaser or Seller. If this Agreement is terminated as provided herein each party shall redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the party furnishing the same.

4.6 Effect of Termination.

- (a) In the event that this Agreement is validly terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Seller; provided, however, that the obligations of the parties set

i

forth in Sections 4.6 and 8.6 and Article XIII hereof shall survive any such termination and shall be enforceable hereunder.

(b) Nothing in this Section 4.6 shall relieve Purchaser or Seller of any liability for a material breach of this Agreement prior to the date of termination. The damages recoverable by the non-breaching party shall include all attorneys' fees reasonably incurred by such party in connection with the transactions contemplated hereby.

(c) The Confidentiality Agreement shall survive any termination of this Agreement and nothing in this Section 4.6 shall relieve Purchaser or Seller of their obligations under the Confidentiality Agreement; provided, that upon the termination of this Agreement, the non-solicitation obligations of Purchaser and its Affiliates under the Confidentiality Agreement shall be of no further force and effect; provided further that upon the Closing, the non-solicitation obligation of Purchaser and its Affiliates under the Confidentiality Agreement with respect to non-U.S. employees of the broker-dealer and investment banking business shall be of no further force and effect.

(d) In the event that Purchaser terminates this Agreement pursuant to Section 4.4(d), Sellers shall pay to Purchaser (i) the Break-Up Fee promptly upon such termination and (ii) the Expense Reimbursement as provided in the Breakup Fee and Competing Bid Order.

(e) In the event that Purchaser or Seller terminates this Agreement pursuant to Section 4.4(a) and at any time after the date of this Agreement and prior to such termination a bona fide proposal for a Competing Transaction shall have been publicly disclosed or otherwise communicated to the Sellers and shall not have been irrevocably withdrawn, then if a Qualified Bid shall be consummated within twelve months after such termination Sellers shall pay to Purchaser (i) the Break-Up Fee and (ii) the Expense Reimbursement as provided in the Breakup Fee and Competing Bid Order on the date of such consummation.

(f) The parties hereto acknowledge that the agreements contained in this Section 4.6 are an integral part of the transactions contemplated by this Agreement. The Sellers shall be jointly and severally liable for any amount due to Purchaser pursuant to this Section 4.6. In the event that the Sellers shall fail to pay any amounts due pursuant to this Section 4.6, the Sellers shall reimburse Purchaser for all reasonable costs and expenses actually incurred or accrued by Purchaser (including reasonable fees and expenses of counsel) in connection with the collection under and enforcement of this Section 4.6.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser that:

5.1 Organization and Good Standing. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted. Seller is duly qualified or authorized to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which it owns or leases real property and each other jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not have a material adverse effect.

5.2 Authorization of Agreement. Except for such authorization as is required by the Bankruptcy Court (as hereinafter provided for), Seller has all requisite power, authority and legal capacity to execute and deliver this Agreement and Seller has all requisite power, authority and legal capacity to execute and deliver each other agreement, document, or instrument or certificate contemplated by this Agreement or to be executed by Seller in connection with the consummation of the transactions contemplated by this Agreement (the "Seller Documents"), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by Seller which is a party thereto and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order, and, with respect to Seller's obligations under Section 4.4, the entry of the Breakup Fee and Competing Bid Order) this Agreement constitutes, and each of the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of Seller enforceable against Seller or, as the case may be, its Subsidiary in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Seller of this Agreement or by Seller and its Subsidiaries of the Seller Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Seller and its Subsidiaries with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the certificate of incorporation and by-laws or comparable organizational documents of Seller or any Subsidiary; (ii) subject

i

to entry of the Sale Order, any Order of any Governmental Body applicable to Seller or any of the properties or assets of Seller as of the date hereof; other than, in the case of clause (ii), such conflicts, violations, defaults, terminations or cancellations that would not have a material adverse effect.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Seller or any Subsidiary in connection with the execution and delivery of this Agreement or the Seller Documents, the compliance by Seller or any Subsidiary with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Seller or any Subsidiary of any other action contemplated hereby or thereby, except for (i) compliance with the applicable requirements of the HSR Act, (ii) the entry of the Sale Order, (iii) the entry of the Breakup Fee and Competing Bid Order with respect to Seller's obligations under Section 4.6, (iv) filings of applications and notices with, and receipt of consents, authorizations, approvals, exemptions or non-objections from, the Securities and Exchange Commission (the "SEC"), foreign and state securities authorities, the Financial Industry Regulatory Authority ("FINRA"), the Commodity Futures Trading Commission ("CFTC"), National Futures Association ("NFA") applicable securities, commodities and futures exchanges, the Financial Services Authority ("FSA") and other industry self-regulatory organizations ("SRO"), (v) the filing of any other required applications, filings or notices with the Board of Governors of the Federal Reserve System (the "Federal Reserve"), any foreign, federal or state banking, other regulatory, self-regulatory or enforcement authorities or any courts, administrative agencies or commissions or other governmental authorities or instrumentalities, and (vi) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not have a material adverse effect.

5.4 Title to Purchased Assets. Other than the real property subject to the Transferred Real Property Leases, intellectual property licensed to Seller and the personal property subject to personal property leases, Seller owns (directly or indirectly) each of the Purchased Assets, and Purchaser will be vested with good and exclusive title to such Purchased Assets, free and clear of all Liens, other than Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. The Purchased Assets, together with all of Seller's agreements hereunder and under the Seller Documents, constitute all of the necessary assets and services used by Seller and its Affiliates to operate the Business as it is currently operated.

5.5 Compliance with Laws; Permits.

(a) Seller and its Subsidiaries, and their respective personnel, are in compliance with all Laws applicable to their respective operations or assets or the Business, except where the failure to be in compliance would not have a material adverse effect. Neither Seller nor any of its Subsidiaries has received any written notice of or been charged with the violation of any Laws applicable to their respective operations or

i

assets or the Business, except where such violation would not have a material adverse effect.

(b) Seller and its Subsidiaries currently have all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not have a material adverse effect. Neither Seller nor any of its Subsidiaries is in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which it is a party required for the operation of the Business as presently conducted, except where such default or violation would not be material.

5.6 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), neither Seller nor any other Person makes any other express or implied representation or warranty with respect to Seller, its Subsidiaries, the Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated by this Agreement, and Seller disclaims any other representations or warranties, whether made by Seller, any Affiliate of Seller or any of their respective officers, directors, employees, agents or representatives. Except for the representations and warranties contained in Article V hereof (as modified by the Schedules hereto), Seller (i) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any director, officer, employee, agent, consultant, or representative of Seller or any of its Affiliates). Seller makes no representations or warranties to Purchaser regarding the probable success or profitability of the Business. The disclosure of any matter or item in any schedule hereto shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would result in a material adverse effect.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that:

6.1 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted.

6.2 Authorization of Agreement. Purchaser has full corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the transactions contemplated hereby and thereby (the "Purchaser Documents"), and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and each Purchaser Document have been duly authorized by all necessary corporate action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Purchaser of this Agreement or the Purchaser Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by Purchaser with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the certificate of incorporation and by-laws of Purchaser, (ii) any Contract or Permit to which Purchaser is a party or by which Purchaser or its properties or assets are bound, (iii) any Order of any Governmental Body applicable to Purchaser or by which any of the properties or assets of Purchaser are bound or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Purchaser of any other action contemplated hereby or thereby, or for Purchaser to conduct the Business, except for compliance with the regulatory regimes referred to in Section 5.3(b) or as would not have a material adverse effect.

6.4 Financial Capability. Purchaser (i) has, and at the Closing will have, sufficient internal funds) available to pay the Cash Amount and any expenses incurred by Purchaser in connection with the transactions contemplated by this Agreement, (ii) has, and at the Closing will have, the resources and capabilities (financial or otherwise) to

i

perform its obligations hereunder, and (iii) has not incurred any obligation, commitment, restriction or Liability of any kind, which would impair or adversely affect such resources and capabilities.

6.5 Condition of the Business. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in Article V hereof (as modified by the Schedules hereto as supplemented or amended), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets and the Business are being transferred on a "where is" and, as to condition, "as is" basis. Any claims Purchaser may have for breach of representation or warranty shall be based solely on the representations and warranties of Seller set forth in Article V hereof (as modified by the Schedules hereto as supplemented or amended). Purchaser further represents that neither Seller nor any of its Affiliates nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding Seller or any of its Subsidiaries, the Business or the transactions contemplated by this Agreement not expressly set forth in this Agreement, and none of Seller, any of its Affiliates or any other Person will have or be subject to any liability to Purchaser or any other Person resulting from the distribution to Purchaser or its representatives or Purchaser's use of, any such information, including any confidential memoranda distributed on behalf of Seller relating to the Business or other publications or data room information provided to Purchaser or its representatives, or any other document or information in any form provided to Purchaser or its representatives in connection with the sale of the Business and the transactions contemplated hereby. Purchaser acknowledges that it has conducted to its satisfaction, its own independent investigation of the Business and, in making the determination to proceed with the transactions contemplated by this Agreement, Purchaser has relied on the results of its own independent investigation.

ARTICLE VII

BANKRUPTCY COURT MATTERS

7.1 [Reserved]

7.2 Bankruptcy Court Filings. As promptly as practicable following the execution of this Agreement, Seller shall file with the Bankruptcy Court the Sale Motion seeking entry of the Sale Order and the Breakup Fee and Competing Bid Order. Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and the Breakup Fee and Competing Bid Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Purchaser shall

i

not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Purchased Assets hereunder. In the event the entry of the Sale Order or the Breakup Fee and Competing Bid Order shall be appealed, Seller and Purchaser shall use their respective reasonable efforts to defend such appeal.

ARTICLE VIII

COVENANTS

8.1 Access to Information. Seller agrees that, until the earlier of the Closing and termination of this Agreement, Purchaser shall be entitled, through its officers, employees and representatives (including, without limitation, its legal advisors and accountants), to make such investigation of the properties, businesses and operations of the Business and such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities as it reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. Seller shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of Seller and its Subsidiaries to cooperate with Purchaser and Purchaser's representatives in connection with such investigation and examination, and Purchaser and its representatives shall cooperate with Seller and its representatives and shall use their reasonable efforts to minimize any disruption to the Business. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Seller or any of its Subsidiaries to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which Seller or any of its Subsidiaries is bound.

8.2 Conduct of the Business Pending the Closing. In order to attempt to preserve the going concern value of the Business, Purchaser shall have the right to be on-site and shall coordinate and consult with representatives of Seller regarding the business, operations and management of the Business. In addition, until the earlier of the Closing and termination of this Agreement, except (1) as required by applicable Law, (2) as otherwise expressly contemplated by this Agreement, or (3) with the prior written consent of Purchaser:

(a) Seller shall, and shall use its best efforts to cause its Subsidiaries whose equity or assets constitute Purchased Assets to:

(i) conduct the Business only in the Ordinary Course of Business (recognizing its current distressed state); and

(ii) use its commercially reasonable efforts to (A) preserve the present business operations, organization and goodwill of the Business, and (B)

i

preserve the present relationships with customers and suppliers of the Business and Seller's Subsidiaries (recognizing that Seller reserves the right to cause any of its Subsidiaries, other than a Subsidiary the equity or assets of which constitutes a Purchased Asset, to commence a proceeding under the Bankruptcy Code or other applicable state or foreign law); and

(b) Seller shall not, and shall not permit its Subsidiaries whose equity or assets constitute Purchased Assets to, solely as it relates to the Business:

(i) other than in the Ordinary Course of Business, (A) materially increase the annual level of compensation of any director or executive officer of Seller, (B) increase the annual level of compensation payable or to become payable by Seller or any of its Subsidiaries to any such director or executive officer, (C) grant any unusual or extraordinary bonus, benefit or other direct or indirect compensation to any such director or executive officer, or (D) enter into any employment, deferred compensation, severance, consulting, non-competition or similar agreement (or amend any such agreement) to which Seller or any of its Subsidiaries is a party or involving any such director or executive officer, except, in each case, as required by applicable Law from time to time in effect or by any existing employee benefit plans;

(ii) make or rescind any material election relating to Taxes, settle or compromise any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, or except as may be required by applicable Law or GAAP, make any material change to any of its methods of accounting or methods of reporting income or deductions for Tax or accounting practice or policy from those employed in the preparation of its most recent tax returns;

(iii) subject any of the Purchased Assets to any Lien, except for Permitted Exceptions;

(iv) cancel or compromise any material debt or claim or waive or release any material right of Seller or any of its Subsidiaries that constitutes a Purchased Asset except in the Ordinary Course of Business;

(v) [Reserved];

(vi) enter into, modify or terminate any labor or collective bargaining agreement or, through negotiation or otherwise, make any commitment or incur any liability to any labor organization;

(vii) other than (A) in the Ordinary Course of Business or (B) secured borrowings from the Federal Reserve Bank under the Primary Dealer Facility, incur any indebtedness for borrowed money, issue any debt securities,

i

assume, guarantee, endorse or otherwise become responsible for the obligations of any other individual, corporation or other entity, or make any loan or advance or capital contribution to, or investment in, any person, in any case that would be related to the Business or constitute an Assumed Liability;

(viii) set any record date or payment date for the payment of any dividends on its capital stock or make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock;

(ix) sell, transfer, pledge, lease, license, mortgage, encumber or otherwise dispose of any of Purchased Assets (including pursuant to securitizations) to any individual, corporation or other entity or cancel, release or assign any material amount of indebtedness related to the Business to any such person or any claims held by any such person, other than any such transactions as are in the Ordinary Course of Business;

(x) transfer ownership, or grant any license or other rights, to any person or entity of or in respect of any Purchased Intellectual Property, other than grants of non-exclusive licenses pursuant to license agreements entered into in the Ordinary Course of Business;

(xi) in connection with the Business, make any investment in, or any acquisition of, any business entity or division, by merger, consolidation, asset purchase or other business combination, or by contributions to capital; or make any property transfers or purchases of any property or assets, in or from any other individual, corporation, joint venture or other entity;

(xii) in connection with the Business, conduct its operations or take actions related to trading or credit extension in any manner other than in the Ordinary Course of Business;

(xiii) change in any material respect the policies, practices and procedures governing operations of the Business;

(xiv) amend or otherwise modify, except in the Ordinary Course of Business, or knowingly violate in any material respect the terms of, any Purchased Contract, or (ii) except as may be required by applicable Law, create or renew any agreement or contract or other binding obligation related to the Business containing (A) any material restriction on the ability of Purchaser to conduct the Business as it is presently being conducted or (B) any material

i

restriction on the ability of Purchaser to engage in any type of activity or business after the Closing;

(xv) abandon, cancel, let lapse, fail to renew, fail to continue to prosecute, protect, or defend, or dispose of, any Purchased Intellectual Property;

(xvi) commence or settle any claim, action or proceeding related to the Business, other than settlements resulting solely in the payment of monetary damages in amounts not in excess of \$500,000 in the aggregate; or

(xvii) agree to do anything prohibited by this Section 8.2.

8.3 Consents. Seller shall use (and shall cause each of its Subsidiaries to use) its commercially reasonable efforts, and Purchaser shall cooperate with Seller, to obtain at the earliest practicable date all consents and approvals required to consummate the transactions contemplated by this Agreement, including, without limitation, the consents and approvals referred to in Section 5.3(b) hereof; provided, however, that Seller shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or legal proceedings to obtain any such consent or approval.

8.4 Regulatory Approvals.

(a) If necessary, Purchaser and Seller shall (a) make or cause to be made all filings required of each of them or any of their respective Subsidiaries or subsidiaries, as applicable, or Affiliates under the HSR Act or other Antitrust Laws with respect to the transactions contemplated hereby as promptly as practicable and, in any event, within 1 Business Day after the date of this Agreement, (b) comply at the earliest practicable date with any request under such Laws for additional information, documents, or other materials received by each of them or any of their respective Subsidiaries or subsidiaries, as applicable, from any other Governmental Body in respect of such filings or such transactions, and (c) cooperate with each other in connection with any such filing and in connection with resolving any investigation or other inquiry of any Governmental Body under any Antitrust Laws with respect to any such filing or any such transaction. Each such party shall use best efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable law in connection with the transactions contemplated by this Agreement. Each such party shall promptly inform the other parties hereto of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such filings or any such transaction. No party hereto shall independently participate in any formal meeting with any Governmental Body (other than Purchaser solely with respect to a Governmental Body in the United Kingdom) in respect of any such filings, investigation, or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend and/or participate. Subject to applicable law, the parties hereto will consult and cooperate with

i

one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the HSR Act or other Antitrust Laws. Seller and Purchaser may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 8.4 as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Seller or Purchaser, as the case may be).

(b) Each of Purchaser and Seller shall use its best efforts to resolve such objections, if any, as may be asserted by any Governmental Body with respect to the transactions contemplated by this Agreement under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the "Antitrust Laws"). In connection therewith, if any Legal Proceeding is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement is in violation of any Antitrust Law, each of Purchaser and Seller shall cooperate and use its best efforts to contest and resist any such Legal Proceeding, and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents, or restricts consummation of the transactions contemplated by this Agreement, including by pursuing all available avenues of administrative and judicial appeal and all available legislative action, unless, by mutual agreement, Purchaser and Seller decide that litigation is not in their respective best interests.

8.5 Further Assurances.

(a) Each of Seller and Purchaser shall use its commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement.

i

(b) In the event that, for any reason including a determination by a court of competent jurisdiction that any sale, transfer, assignment, conveyance or delivery contemplated by this Agreement is ineffective or invalid to vest or confirm such title, any conveyance, assignment, assumption, allocation or other action is necessary or appropriate to vest in or confirm to Purchaser full title to any of the Purchased Assets vested in Purchaser pursuant to Section 2.1, or to cause Purchaser to assume any Liabilities allocated to Purchaser pursuant to Section 2.3, then Seller shall, and shall cause its Subsidiaries to, execute and deliver all such instruments and take all such actions necessary in order to convey, assign or allocate such Purchased Assets or Liabilities to Purchaser.

8.6 Confidentiality.

(a) Purchaser acknowledges that the Confidential Information provided to it in connection with this Agreement, including under Section 8.1, and the consummation of the transactions contemplated hereby, is subject to the terms of the confidentiality agreement between Purchaser and Seller dated September 11, 2008 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. Effective upon, and only upon, the Closing Date, the Confidentiality Agreement shall terminate with respect to information relating solely to the Business or otherwise included in the Purchased Assets; provided, however, that Purchaser acknowledges that any and all other Confidential Information provided to it by Seller or its representatives concerning Seller and its Subsidiaries shall, other than Purchased Assets, remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date. For purposes of this Section 8.6, "Confidential Information" shall mean any confidential information with respect to, including, methods of operation, customers, customer lists, products, prices, fees, costs, Technology, inventions, Trade Secrets, know-how, Software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters.

(b) From and after the Closing, Seller shall, and shall cause its Subsidiaries to, use the same efforts to maintain the confidentiality of any proprietary or confidential information regarding the Purchased Intellectual Property as Seller and/or its Subsidiaries used to maintain the confidentiality of such information prior to the Closing.

8.7 Preservation of Records. Seller and Purchaser agree that each of them shall preserve and keep the records held by it or their Affiliates relating to the Business for a period of seven (7) years from the Closing Date (or such longer period as may be required by applicable Law) and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any insurance claims by, Legal Proceedings or tax audits against or governmental investigations of Seller or Purchaser or any of their Affiliates or in order to enable Seller or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Seller or Purchaser wishes to destroy such records before or after that time (and such

proposed destruction is not in violation of applicable Law), such party shall first give ninety (90) days prior written notice to the other and such other party shall have the right at its option and expense, upon prior written notice given to such party within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

8.8 Publicity. Neither Seller nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Purchaser or Seller, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Seller lists securities, provided that the party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

8.9 Trademark License.

(a) From and after the closing Purchaser hereby grants Seller a perpetual, worldwide, nonexclusive, full paid, royalty-free license under the trademarks "LEHMAN" and "LEHMAN BROTHERS," including any logos containing such names (collectively, the "Licensed Marks") for any of its existing uses or in connection with the IMD Business and the unwinding of any of its other operations including use in corporate or other entity names. The foregoing license as it relates to the IMD Business shall be assignable by Seller without the need for further consent to a purchaser of all or substantially all of the equity interests in or assets of the IMD Business. Seller shall have the right to sublicense the foregoing license to any of its Subsidiaries and an assignee in connection with a sale of all or substantially all of the IMD Business shall have a right to sublicense such right to any of its Affiliates in connection with the conduct of that business, provided that any such sublicense shall terminate on the date when Seller's or its assignee's license terminates. In the remainder of this provision, the licensee or sublicense (Seller or Seller's assignee or their sublicensees) shall be referred to as "Licensee." Each Licensee acknowledges Purchaser's ownership of the Licensed Marks and the validity of the Licensed Marks and shall not register any confusingly similar mark in any jurisdiction. All goodwill arising from use of the Licensed Marks shall inure to Purchaser's benefit. Each Licensee shall use each Licensed Mark in connection with any markings or other notices as required by law. Purchaser shall have the right to supervise and control the use of the Licensed Marks by each Licensee, including by reviewing specimens of use of the Licensed Marks, with respect to the nature and quality of the products and services designed, performed, distributed, sold or otherwise commercialized by such Licensee and the materials used to promote such products and services for the purpose of protecting and maintaining the validity of the Licensed Marks and the goodwill associated with the Licensed Marks. Each Licensee shall at all times use the Licensed Marks only in connection with goods and services of quality at least as

i

high as that offered by Seller and its Affiliates under such marks immediately prior to the Closing. Any use of the Licensed Marks in connection with the IMD Business shall include a disclaimer in a form reasonably acceptable to Purchaser indicating that the IMD Business is not affiliated with Seller. Seller or its assignee shall be responsible for each Licensee's compliance with the terms of this Section 8.9 and shall be liable to Purchaser for any non-compliance by any such Licensee with any such terms.

(b) Purchaser hereby grants to Seller a perpetual, irrevocable, worldwide, nonexclusive, fully-paid, royalty-free license under all non-Mark Purchased Intellectual Property used in or covering any business of the Seller and/or its Affiliates other than the Business in the fields of investment management, investment research, portfolio management and other fields of the IMD Business as well as the unwinding of any of Seller's other operations, solely for use in connection with such business outside of the Business. The foregoing license as it relates to the IMD Business shall be assignable without the requirement of further consent by Seller in connection with a sale of all or substantially all of the assets of the IMD Business and may be sublicensed to any entity conducting the IMD Business and any successor of the IMD Business and any contractor providing services to such business or successor. The foregoing license shall be under Purchased Intellectual Property acquired by Purchaser hereunder that was previously owned by Seller or its Affiliates as well as Purchased Intellectual Property owned by third parties as to which Purchaser shall have after Closing has the right to grant a sublicense without requirement of additional consent or payment of additional consideration.

8.10 Use of Purchased Intellectual Property. Except as permitted under subsection 8.9 above, after the Closing Date, neither the Seller nor any of its Subsidiaries will, directly or indirectly, in any jurisdiction: (i) exploit or make use of, or authorize any third party to exploit or make use of, any of the Purchased Intellectual Property, or any Marks confusingly similar to the Purchased Marks; (ii) attempt to register the Purchased Marks or any mark confusingly similar thereto; or (iii) challenge or otherwise contest the Purchaser's efforts to register, or enforce its trademark registrations for and trademark rights in, the Purchased Marks or its rights in other Purchased Intellectual Property.

8.11 Deferred Transfers.

i

(a) If and to the extent that the allocation to and vesting in Purchaser of any Purchased Assets pursuant to Section 2.1 or otherwise would be a violation of applicable Law or require any Consent or the approval of any Governmental Body or the fulfillment of any condition that cannot be fulfilled by the Purchaser prior to the Closing then, unless the Parties shall otherwise agree, the allocation to and vesting in Purchaser of such Purchased Asset shall, without any further action by any Party, be automatically deferred and any allocation or vesting of such Purchased Asset pursuant to Section 2.1 or otherwise shall be null and void until such time as all violations of applicable Law are eliminated, such Consents or approvals of Governmental Bodies are obtained, and such conditions are fulfilled. Any such Purchased Asset shall be deemed a "Deferred Transfer Purchased Asset."

(b) If and to the extent that the allocation to Purchaser of, and Purchaser's becoming responsible for, any Assumed Liabilities pursuant to Section 2.3 or otherwise would be a violation of applicable Law or require any Consent or approval of any Governmental Body or the fulfillment of any condition that cannot be fulfilled by Seller prior to the Closing, then, unless the Parties shall otherwise agree, the allocation to Purchaser of, and Purchaser's becoming responsible for, such Assumed Liability shall, without any further action by any Party, be automatically deferred and any allocation or responsibility for such Assumed Liability pursuant to Section 2.3 or otherwise shall be null and void until such time as all violations of applicable Law are eliminated, such Consents or approvals of Governmental Bodies are obtained, and such conditions are fulfilled. Any such Assumed Liability shall be deemed a "Deferred Transfer Assumed Liability."

(c) With respect to any Deferred Transfer Purchased Asset or any Deferred Transfer Assumed Liability, insofar as it is reasonably possible, (i) Seller shall, and shall cause any applicable Subsidiary to, following the Closing, hold such Deferred Transfer Purchased Asset for the use and benefit of Purchaser and its Subsidiaries (at the expense of Purchaser) and (ii) Purchaser shall, or shall cause its applicable Subsidiary to, pay or reimburse Seller for all amounts paid or incurred in connection with the retention of such Deferred Transfer Assumed Liability. In addition, Seller shall, and shall cause any applicable Subsidiary to, insofar as reasonably possible and to the extent permitted by applicable Law, hold and treat such Deferred Transfer Purchased Asset in the Ordinary Course of Business in accordance with past practice and take such other actions as may be reasonably requested by Purchaser in order to place Purchaser, insofar as permissible under applicable Law and reasonably possible, in the same position as if such Deferred Transfer Purchased Asset had been transferred to and vested in Purchaser or an applicable Subsidiary at the Closing and so that, to the extent possible, all the benefits and burdens relating to such Deferred Transfer Purchased Asset, including possession, use, risk of loss, potential for gain, and dominion, control and command over such Deferred Transfer Purchased Asset, are to inure from and after the Closing to Purchaser or its applicable Subsidiary entitled to the receipt of such Deferred Transfer Purchased Asset.

i

(d) If and when the Consents, approvals of Governmental Bodies and/or conditions, the absence or non-satisfaction of which caused the deferral or transfer of any Deferred Transfer Purchased Asset or Deferred Transfer Assumed Liability pursuant to Section 8.12(a), are obtained or satisfied, the transfer, allocation or novation of the applicable Deferred Transfer Purchased Asset or Deferred Transfer Assumed Liability shall be effected in accordance with and subject to the terms of this Agreement.

(e) Seller shall not be obligated, in connection with the foregoing, to expend any money unless the necessary funds are advanced, assumed or agreed in advance to be reimbursed by Purchaser, other than reasonable attorney's fees and recording or similar fees, all of which shall be promptly reimbursed by Purchaser.

(f) For a period of nine months after the Closing Date, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, to the extent Excluded Employees occupied real property subject to a Transferred Real Property Lease prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such real property to the same extent and for the same purposes as such real property was occupied and used by such Excluded Employees prior to the Closing, without charge or consideration.

(g) For a period of nine months after the Closing Date, subject to reasonable security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, after the Closing, to the extent Transferred Employees occupied real property is not subject to a Transferred Real Property Lease prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use such real property to the same extent and for the same purposes as such real property was occupied and used by such Transferred Employees prior to the Closing, without charge or consideration.

8.12 Release of Guarantees. Purchaser shall deliver to the respective beneficiaries of any and all guarantees relating to or arising under any Purchased Contracts, Transferred Real Property Leases or Assumed Liabilities ("Seller Guarantees") such replacement guarantees from Purchaser and its Affiliates, letters of credit, collateral, or other credit support, as shall be required pursuant and in accordance with any Purchased Contract, Transferred Real Property Leases or Assumed Liability. In the event that the respective beneficiaries under any of the Seller Guarantees do not agree to release (the "Guarantee Release") Seller and its Subsidiaries from any and all liability arising thereunder after the Closing, prior to the Closing, then Purchaser shall cause to be delivered to Seller, as beneficiary, at the Closing an indemnification agreement and guarantee, dated and effective as of the Closing Date and in form and substance reasonably satisfactory to Seller and from a creditworthy obligor as shall be satisfactory to Seller (collectively, "Backstop Documents"), pursuant to which Seller and its Affiliates shall, from and after the Closing, be indemnified, reimbursed and held harmless from any and all liabilities, losses, claims, costs and expenses under or arising out of the

i

relevant Seller Guarantee. From and after the Closing, Purchaser shall not permit any Contract to which a Seller Guarantee relates to be renewed, extended, amended or modified unless the Purchaser obtains and delivers to Seller the related Guarantee Release duly executed by the beneficiaries of the related Seller Guarantee.

8.13 Transition Services. The Purchaser and Seller shall use commercially reasonable efforts to enter into a Transition Services Agreement in a form reasonably acceptable to Seller and Purchaser in order for each of Seller and Purchaser to continue to receive the services provided between LBI and LBHI on the Closing Date.

8.14 Subleases.

(a) For the leased premises located in 555 California Street, San Francisco, CA, Seller shall sublet to Purchaser pursuant to a sublease agreement (the "Seller Sublease"), reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, a portion of the demised premises in such location subject to the terms of the applicable lease and obtaining the landlord's consent to the Sublease or Bankruptcy Court approval. Purchaser shall bear its portion of the occupancy cost for such location based on the relative square footage sublet. Seller and Purchaser shall enter into the Seller Sublease at Closing to memorialize the provisions of this Section.

(b) For the leased premises located in 125 High Street, Boston, MA, 190 S. LaSalle Street, Chicago, IL and 10250 Constellation Boulevard, Los Angeles, CA Seller shall assume such leases in connection with Seller's bankruptcy proceedings and assign such leases to Purchaser. Purchaser shall then sublet to Seller or a designee of Seller, in either event with credit reasonably acceptable to Purchaser, pursuant to three separate subleases (each, a "Purchaser Sublease", collectively the "Purchaser Sublease"), reasonably acceptable to both Purchaser and Seller and subject in all cases to the terms of the underlying lease, a portion of the demised premises in such locations shall be subject to obtaining the landlord's consent to each Sublease or Bankruptcy Court approval. Seller shall bear its portion of the occupancy cost for each such location based on the relative square footage sublet. Seller and Purchaser shall enter into each Sublease at Closing to memorialize the provisions of this Section.

8.15 Landlord Notice. Seller shall give notice, on the date hereof, to Rock-Forty-Ninth LLC in accordance with the terms of the 745 Seventh Ground Lease, regarding the transactions contemplated hereunder and shall provide Rock-Forty-Ninth LLC with the appropriate bankruptcy filings in order to provide adequate notice thereof under applicable Law.

8.16 Artwork. Purchaser shall have the right to possess, for a period of one-year after the closing, all of the artwork at the Seller's headquarters located at 745 Seventh Avenue, New York, New York. At any time during such period, Purchaser shall have the option to purchase any or all of the artwork for a price equal to its appraised value (as

i

determined by an independent, recognized appraiser). To the extent Purchaser does not exercise such option on any or all of the artwork by the first anniversary of the Closing, the Purchaser shall return such artwork to the Seller.

ARTICLE IX

EMPLOYEES AND EMPLOYEE BENEFITS

9.1 Employee Benefits.

(a) Effective as of the Closing Date, Purchaser shall, or shall cause one of Purchaser's Subsidiaries to, continue to employ (where employment continues or is transferred to Purchaser or a Subsidiary of Purchaser automatically by operation of Law), or offer employment to (where employment does not continue or transfer automatically by operation of Law), each Offeree. For purposes of this Agreement, the term "Offeree" means each active employee employed primarily in connection with the Business at the Closing, other than such employees who are identified by Purchaser to Seller prior to Closing, such identified persons shall not include any person who is in the targeted population referred to in Section 10.1(b). Each Offeree who accepts Purchaser's or one of its subsidiaries' offer of employment, together with each person whose employment transfers to Purchaser or a subsidiary of Purchaser automatically by operation of law, shall be referred to herein as a "Transferred Employee." Each Person who is not a Transferred Employee shall be referred to herein as an "Excluded Employee". An Offeree who performs work at his then applicable place of employment on the first Business Day immediately following the Closing shall be deemed for all purposes of this Agreement to have accepted Purchaser's or one of its subsidiaries' offer of employment and shall be deemed to be a Transferred Employee for all purposes of this Agreement.

(b) Without limiting any additional rights that each Transferred Employee may have, Purchaser shall, or shall cause its Subsidiaries, for a period commencing at the Closing and ending on December 31, 2008, to provide to each Transferred Employee whose employment is terminated during such period by the Purchaser by reason of a "reduction in force" or a "job elimination" (as those terms are customarily applied in good faith, consistent with past practice) severance payments and benefits at levels that are no less favorable than such levels as the Transferred Employee would have been entitled to receive pursuant to the provisions of the Seller's severance plans or agreements covering such Transferred Employee as in effect immediately prior to the Closing. Nothing contained in this Section 9.1 or elsewhere in the Agreement shall be construed to prevent, from and after the Closing, the termination of employment of any individual Transferred Employee or any change in the employee benefits available to any Transferred Employee.

i

(c) On or after the Closing, Purchaser shall, or shall cause its Subsidiaries to, pay each Transferred Employee an annual bonus ("08 Annual Bonuses"), in respect of the 2008 Fiscal Year that, in the aggregate, are equal in amount to 100 percent of the bonus pool amounts accrued in respect of amounts payable for incentive compensation (but not base salary) and reflected on the financial schedule delivered to Purchaser on September 16, 2008 and initialed by an officer of each of Holdings and Purchaser (the "Accrued 08 FY Liability"). Such 08 Annual Bonuses shall be awarded on or before March 15, 2009 in such forms and proportions as are consistent with Purchaser's customary practices, so that the aggregate amount awarded shall equal the Accrued 08 FY Liability. Any amounts that would have been allocated in respect of any Transferred Employee who voluntarily terminates employment before such award is made shall instead be allocated among the remaining Transferred Employees (who include, for this purpose, those Transferred Employees who are terminated without cause by Purchaser or its affiliates prior to the time the awards are made) (collectively, the "Remaining Transferred Employees"). However, the Accrued 08 FY Liability shall be reduced if, prior to the time such awards are made, both (x) 10% of the Transferred Employees have voluntarily terminated their employment with the Purchaser and (y) such terminated Transferred Employees would have been expected to receive at least 10% of the 08 Annual Bonuses had no such Transferred Employee's employment in fact terminated. In that case, Purchaser may adjust the Accrued 08 FY Liability proportionately from its initial level, in the same proportion as the reduction in Transferred Employees below 90% of the initial number of Transferred Employees compared to 90% of the initial number of Transferred Employees, in a good faith and reasonably equitable manner to account for the Transferred Employees to whom 08 Annual Bonuses will not be payable, and thereby to reduce the aggregate 08 Annual Bonuses. Any such reduction shall take into account the length of service, seniority within the Business and contribution of the Remaining Transferred Employees, relative to the allocation of the Accrued 08 FY Liability, in accordance with the principles enumerated herein.

ARTICLE X

CONDITIONS TO CLOSING

10.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of Seller, dated the Closing Date, to the foregoing effect;

i

(b) at least 70% of the U.S. and Canadian Persons identified by Seller and reasonably accepted by Purchaser, acting in good faith, not later than two Business Days after the date hereof as the targeted population are actively employed in the Business immediately prior to the Closing and as to whom management of Seller has made a good faith assessment that they will continue in employment with the Business as of the Closing Date;

(c) the Bankruptcy Court shall have entered a final order permitting Seller to sell the premises at 745 Seventh Avenue, New York, New York to Purchaser;

(d) the mortgage in favor of the Seller's Affiliate with respect to the premises at 745 Seventh Avenue, New York, New York shall have been fully repaid and extinguished;

(e) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2;

(f) Purchaser shall have obtained confirmation from the SEC and CFTC that Purchaser will be eligible, following the Closing, to compute its net capital under Appendix E to SEC Rule 15c3-1 and adjusted net capital in accordance with the provisions of CFTC Rule 1.17(c)(6);

(g) Purchaser shall have obtained from the SEC confirmation reasonably satisfactory to Purchaser regarding (i) the transition period during which Purchaser will be permitted to come into compliance with the consolidated holding company supervisory framework applicable to ultimate holding companies that have a principal regulator under SEC Rule 15c3-1e and g, and (ii) the scope of the deference to be extended by the SEC to the Federal Reserve and/or the home country consolidated supervisor of Purchaser's ultimate parent company in connection with the SEC's administration of the framework described in clause (i) of this subsection 10.1(g); and

(h) the Sellers headquarters building at 745 Seventh Avenue, New York, New York shall be substantially habitable.

10.2 Conditions Precedent to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Seller in whole or in part to the extent permitted by applicable Law):

(a) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, and Seller shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect; and

i

(b) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 4.3.

10.3 Conditions Precedent to Obligations of Purchaser and Seller. The respective obligations of Purchaser and Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Seller in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(b) the Bankruptcy Court shall have entered the Breakup Fee and Competing Bid Order, in form and substance reasonably acceptable to Seller and Purchaser;

(c) the Bankruptcy Court shall have entered the Sale Order and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court;

(d) LBI shall have commenced a case under Chapter 7 of the Bankruptcy Code in the Bankruptcy Court; and

(e) Purchaser shall have obtained regulatory approval under the HSR Act and all other material regulatory, self-regulatory, exchange, clearing organization and governmental approvals, authorizations, waivers and/or licenses required to conduct the transferred Business following the Closing substantially in the manner as it was conducted immediately prior to the Closing and, after giving effect to the Closing (subject to such exceptions as shall not, in the aggregate, be material).

10.4 Frustration of Closing Conditions. Neither Seller nor Purchaser may rely on the failure of any condition set forth in Section 10.1, 10.2 or 10.3, as the case may be, if such failure was caused by such party's failure to comply with any provision of this Agreement.

ARTICLE XI

[RESERVED]

ARTICLE XII

TAXES

12.1 Transfer Taxes. Purchaser shall be responsible for (and shall indemnify and hold harmless Seller and its directors, officers, employees, Affiliates, agents,

i

successors and permitted assigns against) any sales, use, stamp, documentary stamp, filing, recording, transfer or similar fees or taxes or governmental charges (including any interest and penalty thereon) payable in connection with the transactions contemplated by this Agreement ("Transfer Taxes"). Seller shall, however, seek to include in the Sales Order a provision that provides that the transfer of the Purchased Assets shall be free and clear of any stamp or similar taxes under Bankruptcy Code Section 1146(c). Seller and Purchaser shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for Transfer Taxes.

12.2 Prorations. Seller and Purchaser shall enter into customary prorations for the Purchased Assets as of the Closing.

12.3 Purchase Price Allocation. Seller and Purchaser shall allocate the purchase price (including the Assumed Liabilities) among the Purchased Assets as specified in Schedule 12.3 and, in accordance with such allocation, Purchaser shall prepare and deliver to Seller copies of Form 8594 and any required exhibits thereto (the "Asset Acquisition Statement"). Purchaser shall prepare and deliver to Seller from time to time revised copies of the Asset Acquisition Statement (the "Revised Statements") so as to report any matters on the Asset Acquisition Statement that need updating (including purchase price adjustments, if any) consistent with the agreed upon allocation. The purchase price for the Purchased Assets shall be allocated in accordance with the Asset Acquisition Statement or, if applicable, the last Revised Statements, provided by Purchaser to Seller, and all income Tax Returns and reports filed by Purchaser and Seller shall be prepared consistently with such allocation.

12.4 Adjustment to Purchase Price. The parties agree that any payment made under this Article XII shall be treated by such parties as an adjustment to the Purchase Price.

ARTICLE XIII

MISCELLANEOUS

13.1 Expenses. Except as otherwise provided in this Agreement, each of Seller and Purchaser shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

13.2 Injunctive Relief. Damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any party hereto shall be entitled to injunctive relief with respect to any such breach, including without limitation specific performance of such covenants, promises or agreements or an order enjoining a party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in

this Agreement. The rights set forth in this Section 13.2 shall be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

13.3 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13.7 hereof; provided, however, that if the Bankruptcy Case has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 13.7.

13.4 Waiver of Right to Trial by Jury. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

13.5 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto), the transition services agreements, the Dip Facility, the Interim Support and Cooperation Agreement, Master Repurchase Agreement and the Confidentiality Agreement represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this

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Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

13.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed in such State.

13.7 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission) or (iii) one business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to Seller, to:

Lehman Brothers Holdings Inc.
745 Seventh Avenue
New York, NY 10019
Facsimile: (646) 758-4226
Attention: Steven Berkenfeld, Esq.

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With a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Facsimile: (212) 310-8007
Attention: Thomas Roberts
Michael Lubowitz

and a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Facsimile: (212) 455-2502
Attention: John Finley
Andrew Keller

If to Purchaser, to:

Barclays Capital Inc.
200 Park Avenue
New York, NY 10166
Facsimile: (212) 412-7519
Attention: Jonathan Hughes, Esq.

With a copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Facsimile: (212) 225-3999
Attention: Victor I. Lewkow
David Leinwand
Duane McLaughlin

and

Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004
Facsimile: (212) 558-3580
Attention: Mitchell S. Eitel
Jay Clayton

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13.8 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

13.9 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Seller or Purchaser (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void, provided that Purchaser shall be entitled to assign its rights and obligations in whole or in part to its Affiliates or to designate its rights to acquire any assets hereunder to its Affiliates. No assignment of any obligations hereunder shall relieve the parties hereto of any such obligations. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

13.10 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner or equityholder of Seller shall have any liability for any obligations or liabilities of Seller under this Agreement or the Seller Documents of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

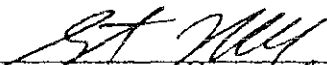
13.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

13.12 Scope of Purchased Assets. This Agreement is not intended to convey and does not convey assets and liabilities from the non-U.S. and non-Canadian operations of Seller.


[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.


LEHMAN BROTHERS HOLDINGS INC.

By: 
Name: Steven Berkowitz
Title: Vice President

LEHMAN BROTHERS INC.

By: 
Name: Steven Berkowitz
Title: Managing Director

LB 745 LLC

By: 
Name:
Title:

BARCLAYS CAPITAL INC.

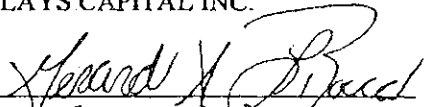
By: 
Name: Gerard LaRocca
Title: Chief Executive Officer

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

PARTIALLY HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DANIEL McISAAC

New York, New York

April 6, 2010

* * *(Pages 12-23 have been designated highly
confidential.)* * *

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 29428

Page 2	Page 3
<p>1 2 April 6, 2010 3 4 VIDEOTAPED deposition of DANIEL 5 McISAAC, held at offices of Boies 6 Schiller & Flexner, LLP, 575 Lexington 7 Avenue, New York, New York, before Kathy S. 8 Klepfer, a Registered Professional 9 Reporter, Registered Merit Reporter, 10 Certified Realtime Reporter, Certified 11 Livenote Reporter, and Notary Public 12 of the State of New York. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 A P P E A R A N C E S : 4 5 JONES DAY, LLP 6 Attorneys for Lehman Brothers, Inc. 7 222 East 41st Street 8 New York, New York 10017 9 BY: BART GREEN, ESQ. 10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays 13 10 North Pearl Street 14 Albany, New York 12207 15 BY: TRICIA J. BLOOMER, ESQ. 16 AMY L. NEUHARDT, ESQ. 17 LOUIS SMITH, ESQ. 18 HEATHER KING, ESQ. 19 - AND - 20 CLEARY GOTTlieb STEEN & HAMILTON LLP 21 Attorneys for Barclays 22 One Liberty Plaza 23 New York, New York 10006 24 BY: DAVID AMAN, ESQ. 25</p>
Page 4	Page 5
<p>1 2 A P P E A R A N C E S : (Cont'd.) 3 4 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 5 Attorneys for the Creditors Committee 6 51 Madison Avenue 7 22nd Floor 8 New York, New York 10010 9 BY: ERIC M. KAY, ESQ. 10 11 HUGHES, HUBBARD & REED, LLP 12 Attorneys for the SIPA Trustee 13 One Battery Park Plaza 14 New York, New York 10004 15 BY: NEIL J. OXFORD, ESQ. 16 AMINA HASSAN, ESQ. 17 FARA TABATABAI, ESQ. 18 19 20 21 22 23 24 25</p>	<p>1 D. McIsaac 2 THE VIDEOGRAPHER: This is the start 3 of the tape labeled number 1 of the 4 videotaped deposition of Daniel McIsaac in 5 the matter In re: Lehman. Today is April 6 6, 2010. The time is approximately 9:37. 7 My name is Michael Pineiro from TSG 8 Reporting, Inc. and I'm the legal video 9 specialist. The court reporter is Kathy 10 Klepfer, in association with TSG Reporting. 11 Will the court reporter please swear 12 in the witness. 13 * * * 14 DANIEL McISAAC, called as a 15 witness, having been duly sworn by a Notary 16 Public, was examined and testified as 17 follows: 18 EXAMINATION BY 19 MS. BLOOMER: 20 Q. Good morning, Mr. McIsaac. 21 A. Good morning. 22 Q. My name is Tricia Bloomer. I'm with 23 Boies, Schiller & Flexner and we represent 24 Barclays Capital in this matter. 25 A. Uh-huh.</p>

Page 6	Page 7
<p>1 D. McIsaac</p> <p>2 Q. Have you ever been deposed before?</p> <p>3 A. No, I have not.</p> <p>4 Q. Okay. Just to go over a few kind of</p> <p>5 ground rules that will help the day go a little</p> <p>6 bit more smoothly. I'll try to ask my questions</p> <p>7 clearly, and if you could allow me to finish a</p> <p>8 question before you begin your answer, and I'll</p> <p>9 try to do the same for you so that Kathy can</p> <p>10 take down everything that we say more easily.</p> <p>11 A. Okay.</p> <p>12 Q. If you can answer with verbal</p> <p>13 responses as opposed to, you know, nods or</p> <p>14 anything like that, that will help things.</p> <p>15 A. As opposed to (nods)--</p> <p>16 Q. And if you need a break at any point,</p> <p>17 please let me know and I'll try to accommodate</p> <p>18 you as soon as we can wrap up whatever topic</p> <p>19 we're on. Okay?</p> <p>20 If you don't understand any of my</p> <p>21 questions, please let me know and I'm happy to</p> <p>22 try to rephrase it for you.</p> <p>23 Okay. I'm going to show you the first</p> <p>24 exhibit, 684.</p> <p>25 (Exhibit 684, Expert Report of Daniel</p>	<p>1 D. McIsaac</p> <p>2 McIsaac, marked for identification, as of</p> <p>3 this date.)</p> <p>4 Q. Exhibit 684 is a copy of the expert</p> <p>5 report that you submitted on exchange-traded</p> <p>6 derivatives issues; is that right?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Okay. Do you have any opinions that</p> <p>9 you didn't express in this report that relate to</p> <p>10 the issues --</p> <p>11 A. No, I don't believe so.</p> <p>12 Q. -- on exchange-traded derivatives?</p> <p>13 Okay.</p> <p>14 And what did you do today to prepare</p> <p>15 for your deposition?</p> <p>16 A. I reread my reports, I spoke to the</p> <p>17 trustees, and did have a slight conversation</p> <p>18 with the financial advisors for the Trustee.</p> <p>19 Q. Okay. And what financial advisors?</p> <p>20 A. Deloitte.</p> <p>21 Q. Okay. Anyone else that you spoke with</p> <p>22 in preparation?</p> <p>23 A. No.</p> <p>24 Q. Okay. Did you review any documents in</p> <p>25 preparation other than your report?</p>
Page 8	Page 9
<p>1 D. McIsaac</p> <p>2 A. The reports and some of the</p> <p>3 information that I would have relied on for my</p> <p>4 reports.</p> <p>5 Q. Do you remember any of the specific</p> <p>6 documents that you reviewed?</p> <p>7 A. I just glanced at everything that was</p> <p>8 there or looked at whatever was in my reliance</p> <p>9 material, would have been affidavits and the</p> <p>10 like in his report.</p> <p>11 Q. Okay. When were you retained by the</p> <p>12 Trustee's counsel to provide expert testimony</p> <p>13 concerning exchange-traded derivatives issues?</p> <p>14 A. Sometime in February, I believe.</p> <p>15 Q. In February. Do you remember whether</p> <p>16 it was -- so February would have been after Mr.</p> <p>17 Leitner submitted his expert report; is that</p> <p>18 correct, to your knowledge?</p> <p>19 A. I think it was, yes.</p> <p>20 Q. Okay. Can you describe generally for</p> <p>21 me what your background is that qualifies you to</p> <p>22 give expert testimony on exchange-traded</p> <p>23 derivatives issues?</p> <p>24 A. I was responsible for the preparation</p> <p>25 of seg and secured reports for the</p>	<p>1 D. McIsaac</p> <p>2 exchange-traded futures for approximately 20</p> <p>3 years. I worked closely with the regulators,</p> <p>4 the FTC, CME, on the issues regarding that, as</p> <p>5 well as the SEC on issues regarding the futures</p> <p>6 business.</p> <p>7 I did some reviews of acquisitions</p> <p>8 that one of my firms worked for -- that I worked</p> <p>9 for did as far as futures-related. As far as</p> <p>10 options, I was responsible for the preparation</p> <p>11 of the reserve formula for 15c3 for</p> <p>12 approximately 20 years, worked closely with our</p> <p>13 people in the areas regarding margin</p> <p>14 requirements at the OCC as they relate to the</p> <p>15 firm and the impact on the firm's calculations,</p> <p>16 and was the liaison for my firms with the</p> <p>17 regulators, both the OCC, CME, SEC, on all</p> <p>18 financial matters.</p> <p>19 Q. Okay. The first thing that you</p> <p>20 mentioned was segregated and secured reports.</p> <p>21 Can you describe those reports?</p> <p>22 A. Yes, that's the customer protection</p> <p>23 portion of the futures rules, CFTC, and it</p> <p>24 basically requires you or requires the firm to</p> <p>25 maintain all the customers' assets in a secure</p>

Page 10	Page 11
<p>1 D. McIsaac 2 place with no liens on them. 3 Calculation is done every day. You 4 start out by reviewing what the -- you owe the 5 customers, your liabilities to the customers, 6 and then determine where the assets are. And 7 you do a report every day and make sure you're 8 in compliance with the rules. 9 Q. Okay. Is that similar to the reports 10 that are required under the SEC's rules? 11 MR. OXFORD: Object to the form. 12 A. Similar in some respects because 13 they're both required to protect customers. 14 Different from the fact that, futures world, all 15 of the assets that the customers give you should 16 be locked up from day one. They're supposed to 17 be sent into a seg. account and kept in 18 segregation at all times. 19 The reserve requirement requires you 20 to do a calculation Mondays as of Friday based 21 on information that as of the close of business 22 Friday. So there is a difference in the way 23 it's done, but it has the same basic qualities 24 attached. 25 Q. Okay. You mentioned that you worked</p>	<p>1 D. McIsaac 2 on reviews of acquisitions? 3 A. Uh-huh. 4 Q. Can you -- and you said that was 5 futures-related acquisitions, I believe? 6 A. Yes. 7 (Pages 12 through 22 have been 8 designated highly confidential and will 9 continue on the next page.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 12	Page 13
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC 2 Q. Can you describe how many acquisitions 3 did you review? 4 A. When I was at UBS, we acquired the 5 futures and options business of ABN Amro. 6 MR. OXFORD: And Trish, if I can just 7 note for the record that, given some 8 confidentiality concerns about this 9 information, we would like for the moment to 10 designate this section of the testimony as 11 highly confidential. 12 MS. BLOOMER: Absolutely. 13 A. Just not sure what -- what's public 14 knowledge, what's not public knowledge. 15 Q. Fair enough. Sure. 16 So, I'm sorry, I -- 17 A. We acquired the -- UBS acquired the 18 futures business from ABN Amro worldwide futures 19 business. I worked on the due diligence. I 20 worked on the preparation of our bid, although I 21 didn't work on the financial information, more 22 of a review, quick review of the aspects of it, 23 how it would have impacted our firm. Worked on 24 the due diligence, supervised the due diligence 25 in some respects of our financial professionals.</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC 2 Q. Uh-huh. 3 A. And was responsible for the worldwide 4 implementation from the finance standpoint of 5 bringing them onto our books and records. 6 Q. When did this transaction take place? 7 A. Dates are fuzzy. 2006, I believe. 8 Maybe 2005. 9 Q. Okay. Were there any other 10 transactions that you -- or, acquisitions that 11 you reviewed? 12 A. We also at one point in time bought 13 the prime broker business of ABN Amro also, 14 which included, you know, the options business 15 that they did for their customers, but it was 16 primarily a purchase of the customer business. 17 Q. Did it include proprietary options? 18 A. No. No sense in buying proprietary 19 options. You book your own. 20 Q. Any other transactions that you were 21 involved in reviewing? 22 A. We also bought -- this goes a little 23 bit further back, a little bit more fuzzy on 24 it -- the capital markets business of Charles 25 Schwab, which included their market-making</p>

Page 14	Page 15
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 business in -- in equities and, in some</p> <p>3 respects, options.</p> <p>4 Q. And that would have been an</p> <p>5 acquisition of the proprietary portfolio as</p> <p>6 opposed to a customer?</p> <p>7 A. It would have been an actual entity as</p> <p>8 well as certain businesses that were bought into</p> <p>9 a different entity. We bought a whole entity</p> <p>10 that did some business as a clearer for some</p> <p>11 prime brokers as well as trading for them,</p> <p>12 market-making for them, and we bought in some</p> <p>13 market-making information into the firm</p> <p>14 separately.</p> <p>15 Q. Okay. Why is it that in that context</p> <p>16 it made sense to buy proprietary positions</p> <p>17 whereas it wouldn't make sense to buy them in</p> <p>18 the case of the prime brokerage acquisitions?</p> <p>19 A. We bought a whole entity.</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 If you could just slow down a little a</p> <p>22 little bit to make sure that Trish gets her</p> <p>23 question finished before you answer and so</p> <p>24 that I have an opportunity to object.</p> <p>25 THE WITNESS: Sorry about that.</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 We bought a whole entity at the time.</p> <p>3 Q. Which time?</p> <p>4 A. With the Charles Schwab. So the</p> <p>5 entity had proprietary -- might have had options</p> <p>6 positions in it when we bought it.</p> <p>7 Q. Okay. Do you know whether it had</p> <p>8 options positions?</p> <p>9 A. I don't remember if it did or not at</p> <p>10 this point in time. It wouldn't have been a</p> <p>11 significant portion of it.</p> <p>12 Q. Do you remember the terms of the</p> <p>13 acquisition of the proprietary book?</p> <p>14 A. We bought the entity at a price, at a</p> <p>15 bid price, and whatever the net asset value of</p> <p>16 the entity would have been.</p> <p>17 Q. What year was the Charles Schwab</p> <p>18 transaction?</p> <p>19 A. Maybe 2004, 2005.</p> <p>20 Q. And the acquisition of the prime</p> <p>21 brokerage business of ABN Amro?</p> <p>22 A. I want to say around 2003, 2004,</p> <p>23 somewhere around there.</p> <p>24 Q. With respect to the UBS acquisition of</p> <p>25 ABN Amro in 2006, the first one that you</p>
Page 16	Page 17
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 testified about?</p> <p>3 A. Uh-huh.</p> <p>4 Q. How long did it take to negotiate that</p> <p>5 deal from the day it was first conceived to the</p> <p>6 day it closed?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. It probably took a couple of months.</p> <p>9 I don't remember exactly.</p> <p>10 Q. And you said that you were involved in</p> <p>11 the due diligence on that transaction?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Can you describe for me what</p> <p>14 the due diligence consisted of?</p> <p>15 A. We reviewed the financial information</p> <p>16 of their business, reviewed their models. I</p> <p>17 didn't review the models per se to determine the</p> <p>18 revenue streams. That was done by other groups.</p> <p>19 I reviewed from a financial standpoint</p> <p>20 and from a regulatory standpoint for both the</p> <p>21 assets we were buying from one entity as well as</p> <p>22 multiple other entities we were buying, I think</p> <p>23 I want to say 13 or 14 different assets and/or</p> <p>24 entities at -- purchased assets from different</p> <p>25 companies and/or entities and reviewed that and</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 directed our professionals that did a little bit</p> <p>3 deeper dive on due diligence.</p> <p>4 Q. Can you give me a sense of the</p> <p>5 relative size of the business that was acquired</p> <p>6 relative to the LBI transaction that you're</p> <p>7 testifying about in this case?</p> <p>8 A. Well, at the time of the acquisition,</p> <p>9 I believe ABN, with what UBS had at the time,</p> <p>10 made us probably the largest FCM in the country.</p> <p>11 Q. Okay. And in 2008 where did Lehman</p> <p>12 Brothers' business rank?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I don't know exactly where it was. I</p> <p>15 don't, looking at the numbers, I don't think it</p> <p>16 was very high.</p> <p>17 Q. You don't think it was very high.</p> <p>18 Okay.</p> <p>19 A. As far as, you know, seg and secured</p> <p>20 accounts. Seg and secured balances, that's how</p> <p>21 you usually rate it.</p> <p>22 Q. Other than reviewing models, what else</p> <p>23 did your due diligence consist of?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 Misstates his testimony.</p>

<p style="text-align: right;">Page 18</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 You can answer.</p> <p>3 A. I didn't review the models. Somebody</p> <p>4 else reviewed the models. I reviewed the</p> <p>5 financial information, the regulatory aspects,</p> <p>6 the impact that it would have on the firm, the</p> <p>7 controls, the system they were using, they were</p> <p>8 using a different system, to make sure we were</p> <p>9 familiar with it.</p> <p>10 Q. Did you review the accounts, the</p> <p>11 customer accounts of the companies you were</p> <p>12 acquired?</p> <p>13 A. No, the businesspeople along with some</p> <p>14 of their professionals reviewed the actual</p> <p>15 customer accounts to determine which customers</p> <p>16 they may not -- they wanted to take and which</p> <p>17 customers they didn't want to take.</p> <p>18 Q. Do you know how long they spent</p> <p>19 conducting that exercise?</p> <p>20 A. I think a lot of it was done prior to</p> <p>21 the final bid as far as, you know, first blush,</p> <p>22 on the larger clients. They probably spent a</p> <p>23 little extra time on the smaller clients.</p> <p>24 Q. Okay. And when you say a little extra</p> <p>25 time, you said that the entire process took a</p>	<p style="text-align: right;">Page 19</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 couple of months --</p> <p>3 A. Some of the customers -- I'm sorry.</p> <p>4 Q. That's okay.</p> <p>5 You said that the entire process took</p> <p>6 a couple of months. How long would you say was</p> <p>7 spent on analyzing the customer base?</p> <p>8 A. I don't know how much time in</p> <p>9 particular. The main review for the customer</p> <p>10 base was that they cleared for some market</p> <p>11 makers and it wasn't a business, I think, that</p> <p>12 we wanted to be in, so it was carving out which</p> <p>13 ones you wanted to take and which ones you</p> <p>14 didn't want to take.</p> <p>15 Q. Okay. Did you do a -- were you</p> <p>16 involved in any type of credit check of the</p> <p>17 customers that you were -- that were in the --</p> <p>18 A. No.</p> <p>19 Q. -- accounts? Okay.</p> <p>20 And did you say that the UBS -- this</p> <p>21 first acquisition from 2006 that we discussed</p> <p>22 was an acquisition of just a customer business,</p> <p>23 or did it also include proprietary portfolio?</p> <p>24 A. It was just the customer business. We</p> <p>25 took over ABN's proprietary business to clear it</p>
<p style="text-align: right;">Page 20</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 for them, so we didn't buy the positions. They</p> <p>3 maintained the positions and we were the</p> <p>4 clearing agent for them.</p> <p>5 Q. Okay. Were there any other</p> <p>6 transactions other than the three that we</p> <p>7 discussed so far that you were involved in</p> <p>8 reviewing?</p> <p>9 A. Just along the way we did some mergers</p> <p>10 and I was involved in the PaineWebber</p> <p>11 acquisition. I was involved in the merger we</p> <p>12 did with SBC, but more for maintaining the</p> <p>13 regulatory atmosphere, making sure we were</p> <p>14 complying with that.</p> <p>15 Q. Did you have any role in negotiating</p> <p>16 the terms of any of those transactions?</p> <p>17 A. I -- we had a separate group that did</p> <p>18 the negotiation that determined how much to pay</p> <p>19 for them. I was consulted by them for various</p> <p>20 issues but didn't negotiate the price.</p> <p>21 Q. Do you have any experience with</p> <p>22 proprietary options or futures trading</p> <p>23 strategies?</p> <p>24 A. I ran the regulatory group at UBS for</p> <p>25 15 years, so in doing the regulatory reports,</p>	<p style="text-align: right;">Page 21</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 you had to understand what we were doing. As we</p> <p>3 went into a new business or a new process or new</p> <p>4 product, I had sign-off authority over it to</p> <p>5 make sure we were doing it accurately.</p> <p>6 Q. And what type of information would you</p> <p>7 require in that role about the trading strategy?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 You can answer.</p> <p>10 A. We need to know what the desk was</p> <p>11 doing so that we could allocate it properly for</p> <p>12 capital purposes and for haircut purposes as</p> <p>13 well as to make sure we were producing it</p> <p>14 properly on our financial statements.</p> <p>15 At one point in time we started doing</p> <p>16 volatility trading and wanted to make sure that</p> <p>17 we had all the right information and that it was</p> <p>18 recorded properly, at the end of the day we had</p> <p>19 all the correct information.</p> <p>20 Q. Was there a particular name of the</p> <p>21 volatility trading positions that were acquired,</p> <p>22 do you know?</p> <p>23 A. No, we didn't acquire them. They were</p> <p>24 a new business that we instituted within the</p> <p>25 firm.</p>

Page 22	Page 23
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 (The non-highly confidential portion</p> <p>3 will continue on the next page.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 D. McIsaac</p> <p>2 Q. Are you familiar with the term "VIX"?</p> <p>3 A. VIX is a -- it's an index that's</p> <p>4 traded over the -- I'm not sure if it's</p> <p>5 over-the-counter or exchange-traded. I think</p> <p>6 it's exchange-traded, but it's, if I remember</p> <p>7 correctly, it's the volatility index of the</p> <p>8 market. You're trading the volatility index.</p> <p>9 Q. What's your understanding of the risk</p> <p>10 profile of a VIX position in a volatile market?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 Vague.</p> <p>13 You can answer if you're able.</p> <p>14 A. I'm not a risk man so I don't know. I</p> <p>15 wouldn't venture to guess what the risk profile</p> <p>16 is. We would normally use quants and people</p> <p>17 like that to determine that information.</p> <p>18 Q. Do you have an understanding of the</p> <p>19 risk profile of any other types of</p> <p>20 exchange-traded derivatives?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 Vague.</p> <p>23 A. Just from the standpoint of dealing</p> <p>24 with them and understanding how the market</p> <p>25 moves, not from a risk standpoint or a value at</p>
Page 24	Page 25
<p>1 D. McIsaac</p> <p>2 risk standpoint. We would have other people</p> <p>3 that were responsible for that.</p> <p>4 Q. Is it fair to say that you're not an</p> <p>5 expert on risk management in terms of</p> <p>6 proprietary trading?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 You can answer.</p> <p>9 A. I'm not an expert on risk trading, on</p> <p>10 risk management. Again, in our firms we would</p> <p>11 have separate people that were responsible for</p> <p>12 risk management processes and procedures.</p> <p>13 Q. What types of risks would you be</p> <p>14 knowledgeable about when analyzing an</p> <p>15 exchange-traded derivatives acquisition?</p> <p>16 A. Reputational risk, and, you know, if</p> <p>17 we were taking on something, the impact it would</p> <p>18 have on the firm's reputation; capital risk,</p> <p>19 from a standpoint of how much capital would be</p> <p>20 used and how it would impact the firm's capital</p> <p>21 position; financial statement disclosure and</p> <p>22 understanding that, and in general, the terms --</p> <p>23 general understanding of the business. So, in</p> <p>24 such when we took over our futures and clearance</p> <p>25 business, again, it's a customer-related</p>	<p>1 D. McIsaac</p> <p>2 business, really not much risk involved.</p> <p>3 Q. If there's not much risk involved,</p> <p>4 what is -- why is it generally the case that a</p> <p>5 transaction of this type would take two months</p> <p>6 to negotiate?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. It would take two months to finalize,</p> <p>9 to set up the systems because you're going to</p> <p>10 convert their information onto your systems, and</p> <p>11 to, you know, finalize all the information you</p> <p>12 need to finalize on it to do your due diligence</p> <p>13 and to, you know, to finalize everything around</p> <p>14 the purchase.</p> <p>15 Q. And would that give you enough time to</p> <p>16 analyze any problems with the books and records</p> <p>17 of the selling entity?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 You can answer.</p> <p>20 A. It would, although, you know, your</p> <p>21 first review would come up with anything</p> <p>22 significant usually.</p> <p>23 Q. Okay. And how long would the first</p> <p>24 review take?</p> <p>25 MR. OXFORD: Same objection.</p>

Page 26	Page 27
<p>1 D. McIsaac</p> <p>2 A. Sometimes it could take a weekend.</p> <p>3 Q. And what's the longest that it could</p> <p>4 take?</p> <p>5 A. It may be a couple weeks, possibly.</p> <p>6 It's according to what you're doing and how --</p> <p>7 what other things you have to do at that point</p> <p>8 in time.</p> <p>9 Q. One of the things that you mentioned</p> <p>10 when you were describing your general areas of</p> <p>11 expertise was margin requirements at the OCC.</p> <p>12 Can you describe for me what your background and</p> <p>13 familiarity is in that regard?</p> <p>14 A. Well, from the firm's financial</p> <p>15 standpoint, you know, we needed to know what the</p> <p>16 margin requirements were, how they impacted the</p> <p>17 customer reserve formula, how they impacted the</p> <p>18 firm in general to know what margin was being</p> <p>19 called; the rules and regulations of the OCC,</p> <p>20 how it impacts additional margin requirements at</p> <p>21 points in time for firms, an understanding of</p> <p>22 that. I worked for a firm that was -- I don't</p> <p>23 think it's a secret -- was having some financial</p> <p>24 difficulties, so we did have a lot of</p> <p>25 conversations with the regulators over the</p>	<p>1 D. McIsaac</p> <p>2 margin requirements.</p> <p>3 Q. Okay. Can you describe generally what</p> <p>4 the problems were with the firm that you just</p> <p>5 described?</p> <p>6 A. We lost a lot of money. UBS lost a</p> <p>7 lot of money.</p> <p>8 Q. Lost a lot of money on what?</p> <p>9 A. On various trading strategies.</p> <p>10 Q. Would that include their trading</p> <p>11 strategies at the OCC?</p> <p>12 A. I do not believe so.</p> <p>13 Q. Okay. What was the context of your</p> <p>14 involvement with the OCC?</p> <p>15 A. As a regulator, a regulated entity, as</p> <p>16 our clearing org., they had a concern on our</p> <p>17 capital position and our ability to fulfill our</p> <p>18 obligations to it. I interfaced with them to</p> <p>19 keep abreast of what the firm was doing, how we</p> <p>20 were doing, and what we were -- what we were</p> <p>21 taking to maintain our capital base and keep</p> <p>22 them comfortable from a financial perspective.</p> <p>23 Q. Were you able to keep them</p> <p>24 comfortable?</p> <p>25 A. I believe so.</p>
Page 28	Page 29
<p>1 D. McIsaac</p> <p>2 Q. Did they ever threaten to liquidate</p> <p>3 the account?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Did they ever increase the margin</p> <p>6 requirements because of the financial situation</p> <p>7 of the company?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 A. As long as this is confidential, yes.</p> <p>10 Q. Do you know the extent to which they</p> <p>11 did that?</p> <p>12 A. 30 percent requirement, additional</p> <p>13 requirement. I think it was called Phase 3 or</p> <p>14 Level 3.</p> <p>15 Q. Did they ever refuse to allow the</p> <p>16 company to withdraw excess that happened to be</p> <p>17 in an account on any given day?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Did you deal with the OCC in this</p> <p>21 regard with respect to customer accounts, firm</p> <p>22 or market maker accounts, or both?</p> <p>23 A. It was the overall relationship we had</p> <p>24 with the OCC.</p> <p>25 Q. So they were both?</p>	<p>1 D. McIsaac</p> <p>2 A. So it was firm and customer.</p> <p>3 Q. Do you have an understanding of what</p> <p>4 the OCC's rights are vis-a-vis clearing members</p> <p>5 when they have insecurities about</p> <p>6 creditworthiness?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. I understand I think they have four</p> <p>9 levels for firms. Level 1 being no concerns; I</p> <p>10 believe their Level 2 is an alert status, where</p> <p>11 they pay a little bit more attention to how the</p> <p>12 firm is doing; Level 3 is where they raise the</p> <p>13 margin requirements by 30 percent; and I believe</p> <p>14 Level 4 is even more severe, where they raise it</p> <p>15 to 50 percent.</p> <p>16 Q. At what level do they start</p> <p>17 threatening to liquidate accounts?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 A. I don't know.</p> <p>20 Q. You've never experienced that?</p> <p>21 A. I've never experienced that.</p> <p>22 Q. Do you know what level LBI was at in</p> <p>23 September of 2008?</p> <p>24 A. No, I do not.</p> <p>25 Q. Did you ask anyone that?</p>

Page 30	Page 31
<p>1 D. McIsaac</p> <p>2 A. I may have asked, and I don't know if</p> <p>3 I ever got -- I don't believe I ever got an</p> <p>4 answer.</p> <p>5 Q. Do you have a sense of which level</p> <p>6 they would be at given what you have learned</p> <p>7 under the course of your studies in this case?</p> <p>8 MR. OXFORD: I'll object to the form</p> <p>9 of the question.</p> <p>10 MR. GREEN: Objection also.</p> <p>11 MR. KAY: Objection.</p> <p>12 A. I don't know.</p> <p>13 Q. What are the OCC's -- withdrawn. Do</p> <p>14 you have an understanding of how the OCC</p> <p>15 computes margin requirements as it relates to</p> <p>16 volatility?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Again, I'm not an expert in that area.</p> <p>19 I have somewhat of a knowledge that they are</p> <p>20 looking at the potential movement in the assets</p> <p>21 and look for margin to satisfy a market movement</p> <p>22 of a one- or two-day market swing based on some</p> <p>23 kind of theoretical pricing models.</p> <p>24 Q. Okay. You just said that you're not</p> <p>25 an expert in the area. What area were you</p>	<p>1 D. McIsaac</p> <p>2 referring to?</p> <p>3 A. In how they calculate the margin</p> <p>4 requirements.</p> <p>5 Q. Are the -- is the OCC's formula</p> <p>6 guaranteed to ensure that in the event of a</p> <p>7 liquidation there would not be a deficit in the</p> <p>8 margin account?</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 A. I don't think any calculation can</p> <p>11 ensure anything. I think their calculation is</p> <p>12 there for whatever they feel they need to</p> <p>13 address as far as the volatility of the firm</p> <p>14 and/or the marketplace.</p> <p>15 Q. Is it possible that a firm, a</p> <p>16 broker-dealer could have an excess in an account</p> <p>17 and nevertheless, upon a liquidation the</p> <p>18 following day, incur a cost that exceeds the</p> <p>19 amount that they had posted?</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 A. I don't have a relevance to look at to</p> <p>22 determine that. I don't know. I've never seen</p> <p>23 it happen. I don't know.</p> <p>24 Q. You don't know if it's possible for</p> <p>25 the liquidation to cost more than what the</p>
Page 32	Page 33
<p>1 D. McIsaac</p> <p>2 margin posted?</p> <p>3 A. I would assume anything is possible.</p> <p>4 I don't know if it's ever happened or there's</p> <p>5 any, you know, history of it happening.</p> <p>6 Q. Would it be more or less likely to</p> <p>7 happen in a particularly volatile market based</p> <p>8 on what you know about how the OCC generally</p> <p>9 formulates their margin requirements?</p> <p>10 MR. OXFORD: Objection to the form.</p> <p>11 A. I guess in a volatile market anything</p> <p>12 is more possible to happen. It would be based</p> <p>13 on what their positions were at the time, were</p> <p>14 they long or short, were they short calls, short</p> <p>15 puts. It's, I guess, it's according to what the</p> <p>16 relevance is of their -- of their book.</p> <p>17 Q. You have your report there with you?</p> <p>18 A. Yes.</p> <p>19 Q. Could you turn to page 14, please, and</p> <p>20 could you review footnote 9?</p> <p>21 A. Yes.</p> <p>22 Q. Footnote 9 references an OCC Rule</p> <p>23 601(c), do you see that?</p> <p>24 A. Uh-huh. Yes, I do.</p> <p>25 Q. How long have you been familiar with</p>	<p>1 D. McIsaac</p> <p>2 this particular rule?</p> <p>3 A. In general terms, probably, you know,</p> <p>4 understanding how the OCC works, probably, in</p> <p>5 general terms, forever.</p> <p>6 Q. Okay.</p> <p>7 A. You know, but not specifically. I've</p> <p>8 never had to deal with it in specifics.</p> <p>9 Q. The rule states that the margin</p> <p>10 requirement shall be the amount of margin assets</p> <p>11 that must be held in the account such that the</p> <p>12 minimum expected liquidation value of the</p> <p>13 account after excluding positions covered by</p> <p>14 deposits in lieu of margin, measured at</p> <p>15 confidence levels as may be selected by the</p> <p>16 corporation from time to time, will not be less</p> <p>17 than zero.</p> <p>18 Do you have an understanding of what</p> <p>19 the phrase "minimum expected liquidating value" I</p> <p>20 means?</p> <p>21 MR. OXFORD: Objection to the form.</p> <p>22 Misstates the document.</p> <p>23 A. "Minimum expected liquidating value" I</p> <p>24 believe is the minimum value of the account</p> <p>25 after it liquidates.</p>

Page 34

Page 35

1 D. McIsaac
2 Q. Is it the minimum value or the minimum
3 expected value?
4 A. Minimum expected value upon
5 liquidation.
6 Q. Okay. And expected by whom?
7 A. I'm assuming this is an OCC rule, so
8 it's expected by them.
9 Q. Okay.
10 A. Based on the confidence level they
11 select.
12 Q. Do you have any understanding of what
13 their confidence level would be based on?
14 A. No, I do not.
15 Q. In a market in which there's more than
16 average volatility, would you agree that it's
17 more likely that their margin requirement will
18 be insufficient to cover the liquidating cost of
19 an account?
20 MR. OXFORD: Object to the form.
21 A. Based on the fact that I have never
22 heard of them liquidating anybody and making a
23 call to the rest of the members, I don't know if
24 it's ever been proven that that's the case.
25 Q. Do you agree that there's more of a

1 D. McIsaac
2 risk of that being the case in a particularly
3 volatile market?
4 MR. OXFORD: Object to the form.
5 A. Could you repeat your question? because
6 it was sort of one question, then another?
7 Could you --
8 Q. Sure. In a market in which there's
9 more than average volatility, would you agree
10 that it's more likely that their margin
11 requirement will be insufficient to cover the
12 liquidating cost of an account?
13 MR. OXFORD: Same objection.
14 A. More likely than what?
15 Q. Than in an average -- than in a market
16 with average volatility.
17 A. Okay, so if you're saying in a market
18 that has extreme volatility, could their
19 calculations be more likely to -- to not be
20 correct than in a market that has average
21 volatility? I guess the answer would be yes.
22 Q. Okay. Are you aware that on Friday,
23 September 19, 2008, the OCC refused to allow LBI
24 to withdraw margin from its account that was in
25 excess of the requirements it had published that

Page 36

Page 37

1 D. McIsaac
2 morning?
3 A. I have heard inferences to that. I
4 might have seen an e-mail to that.
5 Q. Have you -- in your experience, has
6 the OCC ever, to your knowledge, refused a
7 clearing member the ability to withdraw excess
8 from its account?
9 A. To my knowledge, I don't think so that
10 I'm aware of, but I'm sure if they were
11 concerned with other firms, they might have done
12 the same with other firms. It was a time and
13 place in the marketplace.
14 Q. Is it possible that the OCC made that
15 decision because it was concerned that the
16 market may move away from the positions to the
17 extent that the margin requirements were not
18 going to be sufficient to cover the cost of a
19 liquidation?
20 A. I can't determine what OCC's thought
21 process was. Maybe they knew there was an
22 impending sale. I don't know what the rationale
23 was on their part.
24 Q. What is the OCC's overall goal in
25 setting a margin requirement?

1 D. McIsaac
2 MR. OXFORD: Object to the form.
3 A. Again, I'm not there, but I believe
4 their overall goal is to make sure that there's
5 adequate margin so that the entities that
6 they're clearing for can be or could be
7 liquidated at no cost to the rest of the
8 members.
9 Q. Can you turn to page 29 of your
10 report. In paragraph 70, you say here that
11 "Barclays' acquisition balance sheet recognizes
12 a day one gain of \$1.19 billion relating to
13 options." Do you see that?
14 A. Yes.
15 Q. And in the next sentence, you say that
16 "this appears to be comprised of approximately
17 \$2.29 billion of margin at the OCC less \$1.1
18 billion of liabilities at the OCC." Do you see
19 that?
20 A. Yes.
21 Q. Would you agree that if Barclays had
22 not received the \$2.29 billion of margin at the
23 OCC, Barclays would have recorded a loss of \$1.1
24 billion on these options on its acquisition
25 balance sheet?

Page 38

Page 39

1 D. McIsaac
2 A. I'm not sure. From my understanding
3 the proprietary assets, proprietary options at
4 OCC were positive by about 300 million. I
5 believe the short side was an affiliate that
6 cleared through the OCC through -- that was a
7 subordinated affiliate. So I believe the assets
8 they were buying were positive or net asset
9 value of about 300 million as well as they were
10 part of a larger portfolio of assets that they
11 were buying.
12 So they might have -- I don't see
13 where the loss came from because I believe it
14 was affiliates positions, but even if there was,
15 it would be offset by possibly gains in other
16 areas.
17 Q. Can you describe the larger portfolio
18 of assets that Barclays was buying?
19 A. I believe there was a repo that had
20 significant value of assets for which they
21 forgave a liability of Lehman's in lieu of the
22 assets.
23 Q. Okay. Were they long positions or
24 short positions?
25 A. Long positions.

1 D. McIsaac
2 Q. Were there any short positions
3 undertaken on the fixed equity side?
4 A. I don't believe so.
5 Q. Were there short equity positions at
6 Lehman outside of that repo?
7 MR. OXFORD: Object to the form.
8 A. I don't know. I would assume there
9 might have been, but I don't know.
10 Q. Do you recall reviewing the Asset
11 Purchase Agreement that the parties signed on
12 September 16?
13 A. Yes.
14 Q. Do you recall what the amount of long
15 and short positions was that was described in
16 that document?
17 A. I believe it was 70 billion long, 69
18 billion short.
19 Q. Do you have any reason to believe that
20 the 69 billion short didn't still exist by
21 Monday, the 22nd of September, 2008?
22 A. I have no reason to know what the
23 number was at that point in time.
24 Q. Is it fair to say that those ceased
25 being part of the transaction?

Page 40

Page 41

1 D. McIsaac
2 A. Those short positions, yes.
3 Q. Okay. And the long positions still
4 were coming over?
5 MR. OXFORD: Object to the form.
6 Q. Is that correct?
7 A. My understanding of the Clarification
8 Letter and the APA, yes.
9 Q. And do you understand, generally, the
10 nature of the agreement with respect to the
11 assets that were pledged under the Fed repo?
12 A. Could you be a little more specific?
13 I'm not sure what your question is.
14 Q. Sure. Was there a give and take with
15 respect to the long positions that were pledged
16 at the Fed repo?
17 MR. OXFORD: Object to the form.
18 MR. KAY: Same objections.
19 A. What's give and take? I just don't
20 know what you mean by that. If you could --
21 Q. Sure. What is your understanding of
22 the -- of the transaction as it related to the
23 assets in the Fed repo?
24 MR. OXFORD: Object to the form.
25 A. My understanding is that the Fed was

1 D. McIsaac
2 providing Lehman with liquidity, somewhere 45,
3 50 billion dollars, I don't remember exactly,
4 and that was secured by assets of I think I read
5 somewhere about 4 to 5 billion dollars extra in
6 assets.
7 I believe Barclays assumed that repo.
8 I believe they took over most of the assets,
9 possibly, not all of them, and those were long
10 assets that they -- that was part of the
11 purchase agreement at the end.
12 Q. Do you have any -- did you study the
13 pleadings in this case that related to the Fed
14 repo transaction?
15 MR. OXFORD: Object to the form.
16 A. I don't believe so. I don't think I
17 did.
18 Q. Okay. Are you aware that Barclays had
19 expressed concern over the value of the assets
20 in the Fed repo relative to the amount of cash
21 it was advancing?
22 A. No. If I didn't read the pleadings, I
23 probably don't know that.
24 Q. You mentioned that there were
25 affiliate positions that you believe were part

Page 42	Page 43
<p>1 D. McIsaac</p> <p>2 of the account that you referenced liabilities</p> <p>3 for in paragraph 70 of your report?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Can you describe generally what your</p> <p>6 understanding was with respect to the transfer</p> <p>7 of those positions to Barclays?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 Misstates his testimony.</p> <p>10 A. There was an affiliate that signed a</p> <p>11 subordination agreement between them and LBI,</p> <p>12 and I believe the OCC is a party to that,</p> <p>13 whereby they would allow their securities to be</p> <p>14 commingled with the firm's securities. It's an</p> <p>15 advantage usually for the firm because it gets</p> <p>16 them better margin rates, possibly. And it was</p> <p>17 my understanding it was short positions of the</p> <p>18 affiliate.</p> <p>19 From my understanding of reading most</p> <p>20 of the stuff I've read, I didn't -- I do not</p> <p>21 believe that Barclays was taking over any</p> <p>22 affiliates accounts.</p> <p>23 Q. Okay. I'm showing you an exhibit</p> <p>24 that's been marked as Exhibit 51. Do you</p> <p>25 recognize this document?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes, it's the Transfer and Assumption</p> <p>3 Agreement.</p> <p>4 Q. And did you review this in connection</p> <p>5 with preparing your report?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see in the first "whereas"</p> <p>8 clause on the first page where it says, "Lehman</p> <p>9 is a clearing member of OCC and carries one or</p> <p>10 more accounts (nos. 74, 84 and 273)"?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And it defines that as "Account," with</p> <p>13 a capital A?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Is it your understanding that</p> <p>16 the term "account" there encompasses the</p> <p>17 accounts that you referenced in relation to</p> <p>18 paragraph 70 of your report?</p> <p>19 A. I believe they use the same accounts,</p> <p>20 yes.</p> <p>21 Q. If you go down to paragraph 1(b) on</p> <p>22 that same page, do you see where it says,</p> <p>23 "Barclays hereby accepts such sale, assignment,</p> <p>24 and transfer of the Account, agrees to be bound</p> <p>25 by and receive the benefits of maintaining such</p>
Page 44	Page 45
<p>1 D. McIsaac</p> <p>2 Account, and assumes and agrees to perform each</p> <p>3 obligation arising out of or to be performed</p> <p>4 with respect to the activity in the Account"?</p> <p>5 A. Yes.</p> <p>6 Q. Do you understand that to mean that</p> <p>7 Barclays assumed settlement responsibility for</p> <p>8 all of the positions in all of the Lehman's</p> <p>9 accounts at the OCC?</p> <p>10 A. Yes. I think Barclays assumed</p> <p>11 clearance and settlement of all the accounts</p> <p>12 there.</p> <p>13 Q. Okay. And what is the basis for your</p> <p>14 understanding that Barclays -- withdrawn.</p> <p>15 Is it fair to say that Barclays was</p> <p>16 responsible for settling and clearing the</p> <p>17 positions in the 074F and 074M accounts</p> <p>18 regardless of whether they were held on the firm</p> <p>19 account on behalf of an affiliate?</p> <p>20 A. Yes, they would have been responsible</p> <p>21 for settling and clearing and liquidating if</p> <p>22 need be.</p> <p>23 Q. Does that mean that on short positions</p> <p>24 that were held on behalf of affiliates Barclays</p> <p>25 would have to advance any securities that were</p>	<p>1 D. McIsaac</p> <p>2 owed or advance any cash that was owed on an</p> <p>3 exercise or an assignment of one of those</p> <p>4 positions?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 A. It means they would have either</p> <p>7 settled the transactions if they were called or</p> <p>8 closed them out.</p> <p>9 Q. You say in your report that Barclays</p> <p>10 charged back the LBI estate for the cost of</p> <p>11 closing out affiliate positions. Let me give</p> <p>12 you the page reference.</p> <p>13 If you turn to pages 26 and 27 of your</p> <p>14 report, paragraph 66 on page 26, you say,</p> <p>15 "Barclays did not assume any risk with respect</p> <p>16 to LBI affiliate customers' futures positions."</p> <p>17 Oh, wait. I'm sorry. Let me get to</p> <p>18 the options positions because that's what we're</p> <p>19 talking about now.</p> <p>20 MR. OXFORD: I think it's probably</p> <p>21 page 21, Trish, you're looking for.</p> <p>22 MS. BLOOMER: Thank you.</p> <p>23 Q. You say in paragraph 51 that Barclays</p> <p>24 has charged back the LBI estate for the cost of</p> <p>25 maintaining and closing out those positions.</p>

Page 46	Page 47
<p>1 D. McIsaac 2 You see that? 3 A. Yes. 4 Q. What is -- is the Dziemian declaration 5 that you cite here the only factual basis for 6 that statement? 7 A. I believe there's a schedule that I 8 saw that had those amounts in it. I'm not sure 9 if it came from Dziemian's declaration or where 10 else it might have come from, but his 11 declaration did say they were charging them 12 back. 13 MS. BLOOMER: I think maybe this is a 14 good time to take a first break and that way 15 I can pull an extra document that I missed. 16 MR. OXFORD: Okay. That would be 17 great. Thanks. 18 THE VIDEOGRAPHER: The time is 10:25. 19 We're going off the record. 20 (Recess.) 21 THE VIDEOGRAPHER: This is the start 22 of tape number 2. The time is 10:43. We 23 are back on the record. 24 BY MS. BLOOMER: 25 Q. Welcome back, Mr. McIsaac.</p>	<p>1 D. McIsaac 2 A. Thank you. 3 Q. I want to show you a document -- I 4 think we're going to have to mark this. It's 5 already been marked, but I don't have the marked 6 copy. So, Exhibit 685. 7 (Exhibit 685, Declaration of Daniel 8 Dziemian, marked for identification, as of 9 this date.) 10 Q. I'm showing you a document that's 11 marked as Exhibit 685, Mr. McIsaac. We were 12 looking before the break at paragraph 51 of your 13 expert report in which you state that Barclays 14 has charged back the LBI estate for the cost of 15 maintaining and closing out those positions. 16 You see that? 17 A. Yes. 18 Q. Okay. And which positions precisely 19 were you referring to in this statement? 20 A. Let me just see. I guess it would be 21 non-PIM customer transactions. 22 Q. Okay. Would that include affiliates? 23 A. Yes. 24 Q. And you cite the Dziemian declaration 25 at paragraphs 12 and 14 through 16 as the</p>
Page 48	Page 49
<p>1 D. McIsaac 2 support for that statement. 3 Can you review those paragraphs and 4 tell me where in this declaration it suggests 5 that Barclays charged back the LBI estate for 6 the cost of maintaining and closing out the 7 affiliate positions? 8 A. I presume it's in paragraph 14. 9 Q. And what portion of the paragraph? 10 A. The fourth or fifth line down, "The 11 net effect of the close-out and liquidation of 12 all positions and equities relating to the 074C 13 LBI Affiliate Options on the LBI Bridge Account 14 is a net receivable from LBI to Barclays in the 15 amount of \$80 million." 16 Q. And are you assuming in that statement 17 that a net receivable on the LBI Bridge Account 18 is the equivalent of charging back the estate 19 for the cost of closing out those options? 20 MR. OXFORD: Objection to the form. 21 A. If you record a receivable, I assume 22 you think somebody's going to pay you for that, 23 yes. 24 Q. Do you understand what the purpose of 25 the LBI Bridge Account was?</p>	<p>1 D. McIsaac 2 A. I'm -- by the words there, I assume 3 it's a bridge account between two entities or 4 between two systems. On one side you book -- 5 you may book the receivables. On the other side 6 you book the payables. 7 Q. Okay. If you look at paragraph 13, it 8 says, "The bridge accounts were necessary to 9 account for the fact that the settlement bank 10 and the settlement depository as of 11 approximately September 23, 2008, were switched 12 to Barclays while the accounts of these 13 customers and affiliates remained with LBI." 14 You see that? 15 A. Yes. 16 Q. Is it possible that the bridge account 17 was necessitated by accounting concerns and the 18 need to process trades on both sides on a system 19 as opposed to because Barclays was charging back 20 the estate for any of those costs? 21 A. Could you repeat -- 22 MR. OXFORD: Object to the form. 23 A. Sorry. 24 Could you repeat the last part? 25 Because I don't understand the part where you</p>

Page 50	Page 51
<p>1 D. McIsaac 2 talked about charge back, the way you said it. 3 Q. Okay. Is it possible that the bridge 4 account was necessitated by accounting concerns 5 and the need to process trades on both sides on 6 a system as opposed to because Barclays was 7 charging back the estate for any of those costs? 8 MR. OXFORD: Same objection. 9 MR. GREEN: Objection. 10 A. If they were booking them on both 11 sides, then wouldn't they be charging them back? 12 If they were taking responsibility for them, 13 then they would have written them off to an 14 expense, not a receivable. 15 Q. Okay. Did you review Gary Romain's 16 deposition testimony in preparing your report? 17 A. I believe I read it, yes. 18 Q. Okay. I'm going to mark this exhibit 19 as Exhibit 686. 20 (Exhibit 686, Deposition of Gary 21 Romain, marked for identification, as of 22 this date.) 23 Q. You have in front of you Gary Romain's 24 deposition testimony. Can you turn to page 141, 25 please?</p>	<p>1 D. McIsaac 2 A. Do you want your copy back? 3 Q. Pardon? I realize it's yellow. 4 A. That's fine. 5 Q. I wanted to direct you to that portion 6 of it, so it's fine. Thank you. 7 Do you see the portion that's boxed in 8 that deposition transcript? 9 A. Yes. 10 Q. And do you see where Gary Romain says 11 that "we had written off 100 percent of it and 12 in the acquisition accounting, but it's been 13 recorded as an expense, an expense being a 14 deduction from the negative goodwill on the 15 acquisition"? 16 A. Let me read it, please. 17 MR. OXFORD: And Mr. McIsaac, to the 18 extent you feel necessary to answer the 19 question, you should read as much as you 20 need of Mr. Romain's testimony. 21 Q. In fact, perhaps it would be better 22 for you to start on page 139 at the bottom of 23 the page, line 22, when Mr. Romain starts 24 describing -- 25 A. Uh-huh.</p>
Page 52	Page 53
<p>1 D. McIsaac 2 Q. -- the accounting treatment on the 3 affiliate options that we've been discussing. 4 MR. OXFORD: Thank you, Trish. 5 A. Okay. I've read it. Can you repeat 6 your question? I'm sorry. 7 Q. Sure. Do you see in on page 140 in 8 the answer provided on line 7 through 15 Gary 9 Romain says, "So if you look at the payments 10 made to close out positions and for some OCC 11 related-costs, the total payment made by 12 Barclays was \$104 million and the receivable, 13 which might otherwise have been recognized, has 14 been written off"? 15 A. Yes. 16 Q. Did you read that in preparing your 17 report? 18 A. I probably read this, this deposition, 19 so yes, I probably read this, right. 20 Q. Is this inconsistent with your 21 understanding that Barclays charged back the LBI 22 estate for the cost of closing out affiliate 23 positions? 24 A. My understanding, and even from 25 reading here, it looks like they recorded a</p>	<p>1 D. McIsaac 2 receivable which was charging them back, they 3 didn't take them to P&L directly, and eventually 4 wrote them off. Maybe they deemed them 5 uncollectable, I'm not sure why, but I don't 6 know why you would set them up as a receivable 7 if you were going to write them off if you 8 didn't -- if you were taking responsibility from 9 the start. So Mr. Dziemian basically said that 10 they were being set up as receivables. 11 Q. Would you agree that Barclays incurred 12 a cost of \$104 million according to the record 13 facts that you've see in this case on the 14 affiliate options positions in the 074C account? 15 MR. OXFORD: Object to the form. 16 A. I agree that that's what Mr. Romain 17 says in his deposition. I have not seen 18 anything to show me what the numbers are or had 19 anybody provide information, but that's what he 20 says here. 21 Q. Do you have any reason to dispute or 22 doubt the fact that Barclays incurred costs in 23 closing out these positions? 24 A. No, I do not. 25 Q. Do you have any reason to believe that</p>

Page 54	Page 55
<p>1 D. McIsaac</p> <p>2 Barclays collected the amounts that it incurred</p> <p>3 in closing out affiliate positions from the LBI</p> <p>4 estate?</p> <p>5 A. No, I do not.</p> <p>6 Q. Do you believe that Barclays did</p> <p>7 collect the costs from the LBI estate that it</p> <p>8 incurred in closing out --</p> <p>9 A. I don't know if they did or didn't.</p> <p>10 Q. -- the LBI affiliate positions?</p> <p>11 Please allow me to finish the</p> <p>12 question.</p> <p>13 -- in closing out the LBI affiliate</p> <p>14 positions?</p> <p>15 A. I don't know if they collected or not</p> <p>16 or presented a bill or not.</p> <p>17 Q. Is it your general understanding that</p> <p>18 entities write off amounts that they were able</p> <p>19 to collect?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 A. No. You usually write them off when</p> <p>22 you think there might be a -- you may not be</p> <p>23 able to collect them.</p> <p>24 Q. Do you have a general understanding of</p> <p>25 the priorities in a SIPC liquidation with</p>	<p>1 D. McIsaac</p> <p>2 respect to creditor claims?</p> <p>3 A. I'm not a SIPC expert. I have a</p> <p>4 general understanding of the SIPC claims.</p> <p>5 Q. Are you an expert in Customer</p> <p>6 Protection Rules?</p> <p>7 A. Yes.</p> <p>8 Q. What's your understanding of where</p> <p>9 customers fall in terms of priority when they</p> <p>10 have claims against a SIPC Trustee or an estate</p> <p>11 and bank in SIPC proceedings relative to general</p> <p>12 Creditors?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I believe SIPC customers have first</p> <p>15 priority to the assets in the customer estate</p> <p>16 and then share rateably with the general</p> <p>17 Creditors if there's not enough -- not enough</p> <p>18 moneys in the general estate to satisfy them.</p> <p>19 Q. Is it your understanding that the LBI</p> <p>20 estate has sufficient assets currently to cover</p> <p>21 all customer claims?</p> <p>22 MR. OXFORD: Object to the form.</p> <p>23 A. I don't know if they have or don't</p> <p>24 have. I think that's still being assessed.</p> <p>25 Q. Is it possible that the reason</p>
Page 56	Page 57
<p>1 D. McIsaac</p> <p>2 Barclays wrote these expenses off is because</p> <p>3 Barclays didn't expect it would ever be able to</p> <p>4 recover these costs from the Lehman estate?</p> <p>5 A. I can't determine why Barclays wrote</p> <p>6 them off.</p> <p>7 Q. Do you generally consider a</p> <p>8 broker-dealer who is in SIPC proceedings to be a</p> <p>9 good credit risk?</p> <p>10 A. No, I would not consider them a good</p> <p>11 credit risk.</p> <p>12 Q. Would you extend credit to a</p> <p>13 broker-dealer in SIPC liquidation?</p> <p>14 A. Would I extend credit to them after</p> <p>15 they were in liquidation?</p> <p>16 MR. OXFORD: Object to the form.</p> <p>17 A. Sorry.</p> <p>18 Probably if it was court-approved, I</p> <p>19 think there's some way where the court can</p> <p>20 approve you providing credit to a liquidated</p> <p>21 estate, but no, in general terms, I wouldn't.</p> <p>22 Q. Why not?</p> <p>23 A. Because you have a bankrupt estate</p> <p>24 that you don't know the creditworthiness of</p> <p>25 whether or not you'll be paid.</p>	<p>1 D. McIsaac</p> <p>2 Q. Do you think -- do you have any reason</p> <p>3 to believe that Barclays thought it would be</p> <p>4 paid by the LBI estate for losses it incurred on</p> <p>5 affiliate positions that it took clearance</p> <p>6 responsibility for?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 MR. GREEN: Objection.</p> <p>9 A. Again, I don't know what was in</p> <p>10 Barclays' mind and what they thought when they</p> <p>11 wrote off the receivables. I'm not sure what</p> <p>12 the basis was.</p> <p>13 Q. Would you agree that your report</p> <p>14 characterizes the level of risk associated with</p> <p>15 affiliate positions to be minimal, if it existed</p> <p>16 at all?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Yes, I think it says it's less risky</p> <p>19 because the credit is borne by the affiliates,</p> <p>20 the market risk is borne by the affiliates, and</p> <p>21 that I believe Barclays was not taking</p> <p>22 responsibility for any affiliates' positions.</p> <p>23 Q. But you agree that Barclays was taking</p> <p>24 settlement responsibility for those positions?</p> <p>25 A. It appears that in the TAA that they</p>

Page 58	Page 59
<p>1 D. McIsaac 2 took settlement responsibility for them. 3 Q. And are you aware of the financial 4 state of the LBI affiliates themselves during 5 the month of September 2008? 6 MR. OXFORD: Object to the form. 7 A. I believe some of them were in 8 liquidation and some of them may not have been. 9 Q. Would you consider them a credit risk 10 at that time? 11 MR. OXFORD: Object to the form. You 12 mean any time in September? 13 Q. Sure. We'll start with any time in 14 September. 15 A. I don't know what the credit risk 16 would have been in September prior to anybody 17 going into liquidation, what the analysis would 18 have been, and people will take risk based on 19 what the rewards they think they will receive. 20 Q. What reward was Barclays receiving by 21 agreeing to take over settlement responsibility 22 for the affiliate positions? 23 A. Maybe the business that was there and 24 maybe they were willing to take on an additional 25 risk to -- to get the customer business and</p>	<p>1 D. McIsaac 2 whatever other business was there. 3 Q. Were they going to see any profit from 4 taking over the affiliate positions themselves? 5 A. When you take over a business, not 6 every piece of it may be profitable. So you may 7 accept some risk to get the profitable pieces of 8 it. I don't know why they assumed the 9 responsibility for the affiliates if they didn't 10 want them. 11 Q. Earlier you were describing 12 transactions in which you conducted due 13 diligence in one of your prior companies, and 14 you explained that the acquirer spent a week to 15 several weeks reviewing the customer base to 16 determine which customers it wanted and which 17 customers it didn't? 18 A. Uh-huh. 19 Q. Do you believe that Barclays had 20 adequate time during the week of September 15, 21 2008 to review all of the customers that it was 22 acquiring or not acquiring from LBI? 23 MR. OXFORD: Object to the form. 24 A. It possibly didn't have time to review 25 all the customers, but it certainly had time to</p>
Page 60	Page 61
<p>1 D. McIsaac 2 review the affiliates and could have determined 3 that they didn't want to take the affiliate 4 accounts if that was the case. 5 Q. What is your understanding of what 6 would have happened in the event that Barclays 7 had refused to take responsibility for the 8 affiliate positions? 9 A. I don't know what would have happened 10 if they refused to take responsibility for it. 11 Q. Is it your understanding that the 12 affiliate positions were commingled at the OCC 13 with firm positions and also with customer 14 positions? 15 A. Yes. 16 Q. Is it your understanding that there 17 were both affiliate and firm positions in the 18 074F account at the OCC? 19 A. Yes. 20 Q. And is it your understanding that 21 there were affiliate positions commingled with 22 customer positions in the 074C account at the 23 OCC? 24 A. Yes. 25 Q. What is your understanding of the</p>	<p>1 D. McIsaac 2 position that the OCC took during the week of 3 September 15 with respect to Lehman Brothers as 4 a clearing member? 5 MR. OXFORD: Object to the form. 6 Vague. 7 A. I'm not sure what position the OCC 8 took with regard to them. You know, I thought 9 they were going on as business as usual. They 10 looked like they were clearing their trades and 11 assigning their trades, so I don't see any -- I 12 haven't seen anything that says what the OCC did 13 or didn't do. 14 Q. Do you have any basis to say what 15 would have happened to LBI's accounts with the 16 OCC if Barclays had refused to take over 17 settlement responsibility for those accounts? 18 A. I don't have a basis, but I assume the 19 OCC would have liquidated the accounts. 20 Q. Why do you assume that? 21 A. Because Lehman was bankrupt at the 22 time or was entering into SIPC liquidation, so I 23 think the OCC as a first move would liquidate 24 the accounts. It doesn't mean that various 25 positions in those accounts couldn't be</p>

Page 62	Page 63
<p>1 D. McIsaac 2 transferred to another broker-dealer. 3 Q. Do you know how much time Barclays and 4 Lehman had to negotiate the terms of this 5 transaction before they entered into the APA? 6 A. No, I do not. 7 Q. Would it surprise you to hear that it 8 was less than 24 hours? 9 MR. OXFORD: Object to the form. You 10 can answer. 11 A. It would -- wouldn't surprise me or 12 not surprise me. Lehman was in financial 13 difficulty at that time and there were reports 14 in the papers that a lot of people were looking 15 at Lehman from time to time. So I have no idea 16 when Barclays started to look at it and 17 determined what they wanted to do. 18 Q. You didn't review that in connection 19 with this report? 20 A. Review? What would I have reviewed to 21 say that? I'm asking what -- what would I have 22 reviewed? 23 Q. I understand that you're asking that, 24 but I'm asking you what did you review in order 25 to understand the circumstances in which this</p>	<p>1 D. McIsaac 2 deal was negotiated? 3 A. I read the Asset Purchase Agreement. 4 I read the Clarification Letter. I read the 5 TAA. You know, I read some e-mails that went 6 around. As a general knowledge of what was 7 happening in 2008, you know, I lived it. 8 Q. Okay. So is it fair to say that you 9 prepared your report without knowing the amount 10 of time that it took Lehman -- that Barclays and 11 Lehman had to negotiate the APA? 12 A. I didn't specifically find out how 13 much time they took to negotiate it and I don't 14 know what that has to do with what we're talking 15 about. I'm not sure what the timing, you know, 16 has to do with what they decided or what they 17 didn't decide to do. They certainly didn't have 18 to do it, I don't think, at any point in time. 19 There was not a gun held to their head, I don't 20 believe. I mean, unless I didn't -- there's 21 more information than I know. 22 Q. Uh-huh. So when you prepared your 23 opinions in your report, did you believe it was 24 possible that the parties had spent more than a 25 week negotiating the terms of the APA?</p>
Page 64	Page 65
<p>1 D. McIsaac 2 MR. OXFORD: Object to the form. 3 A. I don't think I gave much thought to 4 how much time they spent negotiating it. I 5 understand the timing of what was happening 6 around then. I don't know how long they were 7 talking about the APA, what conversations they 8 may have had during the time period. I don't 9 believe that's public information. 10 Q. Were you allowed to ask questions of 11 fact witnesses during your investigation? 12 A. I -- 13 MR. OXFORD: I'll object to the form 14 of the question. 15 Q. Okay. Go ahead. You can answer. 16 MR. OXFORD: I'm not sure in terms 17 of -- 18 Q. Did you talk to anybody -- let me 19 rephrase the question. 20 MS. BLOOMER: Thanks, Neil. 21 Q. Did you talk to anybody who was 22 involved in the negotiation of the transaction? 23 A. No, I did not. 24 Q. Did you speak with the advisors who 25 were present at the time?</p>	<p>1 D. McIsaac 2 A. No, I did not. 3 MR. OXFORD: Sorry. If you can slow 4 down, Mr. McIsaac, to let me get my 5 objection. 6 I'll object to the form of the 7 question and particularly to the vagueness 8 of the term "advisors." 9 Q. Okay. When did you speak with 10 Deloitte? 11 MR. OXFORD: Object to the form. 12 A. Regarding? Excuse me, regarding what? 13 Q. You said earlier today that in 14 preparing for your deposition today you spoke 15 with Deloitte. Was that the first time that you 16 spoke with them? 17 A. Deloitte is the financial advisors for 18 the Trustee. In working on the original work I 19 did with the motion, I spoke to Deloitte, if 20 that's what you mean, but not in relation to 21 this. 22 Q. Okay. Was Deloitte present, to your 23 understanding, during the negotiations of this 24 deal? 25 A. I don't believe they were, but I don't</p>

Page 66	Page 67
<p>1 D. McIsaac 2 know. 3 Q. Did you ask them? 4 A. No, I did not. 5 Q. Did you ask them any of the 6 circumstances under which the deal was 7 negotiated? 8 A. No, I did not. 9 Q. Did you ask anyone what the 10 circumstances were of the deal at the time it 11 was negotiated? 12 A. I think I understand what was going on 13 in the environment at that time. I don't think 14 I had to ask specifically what was happening in 15 the environment at that time. It was a rough, 16 you know, a difficult time and I don't know if 17 Barclays had one day or five days or how long 18 they were reviewing the transaction. 19 Q. You don't know if it was ten days? 20 A. I don't know if it was ten days. 21 Q. And you don't know if it was a month 22 that Barclays had to review the transaction? 23 A. That's right. 24 Q. Okay. 25 A. But that doesn't change my thoughts on</p>	<p>1 D. McIsaac 2 it because whether or not you had one day or 3 ten, you could still decide to buy something or 4 not buy something. You can decide what you want 5 to buy and what you don't want to buy. 6 Q. Can you remind me, if you haven't 7 testified to this already -- strike that. 8 What is the shortest amount of time 9 that you've ever seen an acquisition of a 10 broker-dealer business consummated in? 11 MR. OXFORD: Object to the form. 12 A. I believe Bank of America bought 13 Lehman Brothers over a weekend. 14 Q. Do you know how long -- did they spend 15 any time negotiating that transaction prior to 16 that weekend? 17 A. All I know is what I read in the 18 papers, and I thought Bank of America was 19 thinking of buying Lehman and instead bought 20 Merrill at that point in time. I thought the 21 negotiations happened over a weekend. 22 Q. Do you know whether they had done due 23 diligence prior to that weekend? 24 A. I don't know. 25 Q. Do you have any knowledge at all of</p>
Page 68	Page 69
<p>1 D. McIsaac 2 the negotiations that took place during the 3 structuring of that deal? 4 A. No, I do not. 5 Q. With respect to the deals that you 6 have personal knowledge of, what's the shortest 7 amount of time that you know of in which an 8 acquisition of a broker-dealer business took 9 place? 10 MR. OXFORD: Object to the form. 11 Vague. 12 A. I -- I've been involved in some 13 acquisitions and mergers that I don't know how 14 much time was spent in doing the negotiation. 15 When UBS and Swiss Bank merged, I have no idea 16 how long it took for them to do the due 17 diligence and decide on the merger. 18 Q. What's the shortest amount of time 19 with respect to a transaction that you do have 20 an idea of how long it took? 21 A. Probably a month or so. 22 Q. You say in your report that the 23 circumstances of this transaction don't affect 24 your opinion. Do you recall saying that in your 25 report?</p>	<p>1 D. McIsaac 2 A. I believe so. 3 Q. Okay. The fact that this transaction 4 closed in 24 -- was negotiated in 24 hours 5 doesn't have any impact on your opinion as to 6 what was rational under those circumstances in 7 terms of structuring the terms of the deal? 8 MR. OXFORD: Objection. 9 Q. Is that your opinion? 10 MR. OXFORD: Object to the form. 11 Assumes facts not in evidence. 12 A. I believe it was negotiated. It 13 didn't have to close, and until such time as it 14 closed, there was still negotiations and I 15 assume due diligence going on. 16 Q. Is it your understanding that an 17 agreement can be negotiated after it's executed? 18 A. An agreement can be -- I don't -- I'm 19 sorry, I'm not sure where you're going on that. 20 "After it's executed," I'm not sure. 21 Q. Sure. Do you agree that the parties 22 would have negotiated the terms of the deal 23 before they signed a binding agreement that 24 expressed and set forth the terms of that deal? 25 MR. OXFORD: Object to the form.</p>

Page 70	Page 71
<p>1 D. McIsaac 2 You can answer. 3 A. I'm sorry. I believe firms negotiate 4 a shell of a deal and then usually negotiate the 5 specifics. Until a final contract is signed and 6 it's consummated, that is not, you know, it's 7 not a closed deal. 8 Q. Showing you a document that's been 9 premarked as Exhibit 630. 10 Can you take the time to review this 11 e-mail and let me know when you're ready? 12 (Document review.) 13 A. Yes. 14 Q. Did you review this document in 15 preparing for your deposition today? 16 A. I believe I might have seen this. I 17 don't remember exactly, but I might have seen 18 this e-mail trail. 19 Q. And had you reviewed this document at 20 the time you prepared your expert report on 21 exchange-traded derivatives? 22 A. I thought I just answered that. I 23 think I might have reviewed this when I -- when 24 I prepared it. 25 Q. Oh, I was asking you whether you</p>	<p>1 D. McIsaac 2 reviewed it when you prepared for the deposition 3 today -- 4 A. Oh, no. 5 Q. -- was my first question. 6 A. No, no, I did not review it before 7 today, for preparation today. I might have 8 reviewed it in preparing my report. 9 Q. You're not sure? You might -- 10 A. I believe I've seen this. I know I've 11 seen the top of it. I don't know if I've seen 12 the whole other trail. 13 Q. Okay. If you turn to the second page, 14 will you look at the paragraph that's 15 denominated paragraph 3? 16 A. Uh-huh. 17 Q. It says, "If the transaction does not 18 close tonight, OCC would need to immediately 19 liquidate and close out the LBI accounts and is 20 preparing to do so." Do you see that? 21 A. Yes. 22 Q. You see that this is an e-mail from 23 James McDaniel of Sidley? 24 A. Uh-huh. 25 Q. And it's to Ed Rosen of Cleary</p>
Page 72	Page 73
<p>1 D. McIsaac 2 Gottlieb. Do you know who Ed Rosen is? 3 A. Yes. He's a lawyer for Cleary 4 Gottlieb. 5 Q. And do you know who Cleary Gottlieb 6 was representing in this transaction? 7 A. I believe they were representing 8 Barclays. 9 Q. And you see Hughes Hubbard is also 10 copied on these e-mails, Giddens and Kobak? 11 A. Uh-huh. 12 Q. Do you know who they are? 13 A. Mr. Giddens is the Trustee and Mr. 14 Kobak is his legal counsel, I believe. 15 Q. Okay. And you see that the SPIC 16 organization, Steve Harbeck, was also copied? 17 A. Yes. 18 Q. You said earlier in your testimony 19 that you didn't think the parties had to do the 20 deal in any particular amount of time, and I 21 believe you said they didn't have a gun to their 22 head. Do you recall that testimony? 23 A. Yes. 24 Q. Do you agree that this e-mail suggests 25 that there was some urgency to the parties in</p>	<p>1 D. McIsaac 2 closing the deal in the timeframe that they did? 3 MR. OXFORD: Object to the form. 4 A. I believe the e-mail from the -- Mr. 5 McDaniel at Sidley Austin was relaying that to 6 Mr. Rosen. Barclays still did not have to go 7 through with the deal if they didn't want to go 8 through with the deal. I mean, again, nobody 9 was holding a gun to their head saying if you 10 don't do this, I'm going to shoot you. They 11 could have walked away from it, I assume, at 12 that point in time or they could have postponed 13 the closing. I don't know if they could have 14 done that, but -- 15 Q. Do you think they could have postponed 16 the closing and avoided liquidation of the OCC 17 account? 18 A. I think you could have negotiated 19 anything with the OCC if they wanted to talk to 20 them about it. I don't know what negotiations 21 were going on. I don't know why this was being 22 pushed at this point in time. 23 I mean, Barclays, when I said they 24 didn't have a gun to their head, they could have 25 walked away from the deal at any point in time.</p>

Page 74	Page 75
<p>1 D. McIsaac</p> <p>2 If they didn't think they had enough time to do</p> <p>3 the due diligence and to understand what they</p> <p>4 were buying, they didn't have to buy it I guess.</p> <p>5 Q. And they didn't have to buy it if they</p> <p>6 didn't like the terms of the deal either, right?</p> <p>7 A. Right.</p> <p>8 Q. You agree that the parties were aware</p> <p>9 that the OCC was at least threatening to</p> <p>10 liquidate the accounts on the 22nd if the deal</p> <p>11 didn't close that morning?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any experience that would</p> <p>14 allow you to surmise on what an OCC</p> <p>15 liquidation -- how an OCC liquidation would have</p> <p>16 proceeded?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. I would assume they would either</p> <p>19 auction the positions off or, you know, closed</p> <p>20 them out. I'm not sure how they would have</p> <p>21 proceeded. I'm not -- I have not seen one in my</p> <p>22 past experience.</p> <p>23 Q. Any liquidation or any auction have</p> <p>24 you seen?</p> <p>25 A. I have not seen a liquidation at the</p>	<p>1 D. McIsaac</p> <p>2 OCC. I have not been involved in a liquidation</p> <p>3 at the OCC.</p> <p>4 Q. Have you been involved in a</p> <p>5 liquidation at any other clearing organization?</p> <p>6 A. I have not personally been involved,</p> <p>7 no.</p> <p>8 Q. What is your understanding of what the</p> <p>9 OCC's rights are in the event of a liquidation?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 A. I believe they have the right to</p> <p>12 liquidate the positions and charge back to the</p> <p>13 clearing firm any losses they incur that's not</p> <p>14 covered by the margin that they have available,</p> <p>15 and if they don't, I assume -- I believe they</p> <p>16 have the right to charge back to other members</p> <p>17 of the clearing org.</p> <p>18 Q. Okay. So you would agree then that</p> <p>19 any margin that was posted at the OCC was</p> <p>20 accessible to the OCC in order to cover the</p> <p>21 costs of a liquidation?</p> <p>22 A. Yes.</p> <p>23 Q. And would you agree that all of the</p> <p>24 margin posted at the OCC was accessible to the</p> <p>25 OCC in the event that they wanted to auction off</p>
Page 76	Page 77
<p>1 D. McIsaac</p> <p>2 the positions instead of liquidating them?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any knowledge of any other</p> <p>5 clearing organizations liquidating or auctioning</p> <p>6 off positions?</p> <p>7 A. I believe that during the week I've</p> <p>8 been informed that the CME auctioned off LBI's</p> <p>9 positions.</p> <p>10 Q. Do you have any understanding of the</p> <p>11 approach that the CME took to auctioning off the</p> <p>12 positions?</p> <p>13 A. I haven't reviewed anything firsthand,</p> <p>14 but I believe they took the various positions</p> <p>15 and would have gone to other firms and asked</p> <p>16 them to assume them.</p> <p>17 Q. And do you know what the CME was</p> <p>18 offering in exchange for other members assuming</p> <p>19 those obligations?</p> <p>20 A. No, I'm not, I'm not sure of the</p> <p>21 negotiations that occurred with them.</p> <p>22 Q. Do you have an understanding of the</p> <p>23 amount of money that was consumed in the auction</p> <p>24 of the CME -- in the CME's auction of LBI's</p> <p>25 proprietary positions?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. I have heard a number maybe a billion</p> <p>4 dollars, but I don't know if I've seen the</p> <p>5 actual documents.</p> <p>6 Q. I'm showing you a document that's</p> <p>7 marked as Exhibit 442. I certainly don't expect</p> <p>8 you to read the whole document.</p> <p>9 A. Okay, good. I was going to say can I</p> <p>10 please get a brief recess if that's the case.</p> <p>11 Q. This is a copy of the hearing that</p> <p>12 took place before Judge Peck in the bankruptcy</p> <p>13 proceeding on September 19, 2008. Have you had</p> <p>14 occasion to review any portion of the sale</p> <p>15 hearing transcript?</p> <p>16 A. I have reviewed this maybe six months</p> <p>17 ago.</p> <p>18 Q. Can you turn to page 61, the full</p> <p>19 paragraph on page 61 starting "Since the hearing</p> <p>20 last Wednesday," and it continues, "and in the</p> <p>21 space of roughly 24 hours, your Honor, there</p> <p>22 have been a number of significant events.</p> <p>23 Yesterday the Chicago Mercantile Exchange</p> <p>24 unilaterally decided to close out all of</p> <p>25 Lehman's positions on that exchange. That</p>

Page 78	Page 79
<p>1 D. McIsaac 2 closeout resulted in a loss to Lehman of 3 approximately \$1.6 billion." Do you see that? 4 A. Yes, I do. 5 Q. Do you recall, does this refresh your 6 recollection -- 7 A. Yes, I think this is probably where I 8 saw it. 9 Q. Do you have any reason to doubt the 10 accuracy of the statement that's made on this 11 page? 12 A. No, I do not. 13 Q. So you'd agree that the Chicago 14 Mercantile Exchange closed out Lehman's 15 positions at a cost of \$1.6 billion? 16 MR. OXFORD: Object to the form. 17 A. That's what it says here. 18 Q. And that's what you believe happened? 19 A. That's what I believe happened. 20 MR. OXFORD: Object to the form. 21 Q. What's your understanding of what a 22 SIPC trustee's objectives are when analyzing the 23 terms of a proposed bankruptcy sale? 24 MR. OXFORD: I'll object to the form. 25 A. I assume that they -- any sale is</p>	<p>1 D. McIsaac 2 going to occur of any assets, they would have to 3 make sure that they are protecting the customers 4 and receive, you know, value for the assets 5 they're selling. 6 Q. And is the customer -- is the 7 preservation of value for customers the sole 8 objective of a trustee, do you know? 9 MR. OXFORD: I'll object to the form 10 of the question. 11 A. No, I don't think so. I think they're 12 supposed to preserve the whole estate. 13 Q. Are trustees also interested in 14 maximizing the number of customer accounts that 15 can be preserved and transferred to a solvent 16 broker-dealer? 17 MR. OXFORD: Objection to the form. 18 A. I believe both transfers are a 19 priority of SIPC. 20 Q. Have you ever advised the SIPC trustee 21 in analyzing the terms of a proposed bankruptcy 22 sale? 23 A. No, I have not. 24 Q. Do you have any expertise in advising 25 on what the proper objectives are of a trustee</p>
Page 80	Page 81
<p>1 D. McIsaac 2 in that circumstance? 3 MR. OXFORD: Objection to the form. 4 A. No, I do not. 5 Q. Is it your understanding that the 6 proprietary positions in Lehman's OCC account as 7 of the week of September 15 carried exposure? 8 MR. OXFORD: Object to the form. 9 A. All positions carry exposure. I'm not 10 sure if I'm answering the question, your 11 question, but all positions, as far as I'm 12 concerned, carry exposure. 13 Q. By transferring positions do you agree 14 that you're eliminating that exposure? 15 MR. OXFORD: I object to the form. 16 A. By the person transferring them? 17 Q. Uh-huh. 18 A. Yes, they would limit their exposure. 19 Q. So you would agree that LBI and the 20 Trustee, by agreeing to transfer the proprietary 21 positions to Barclays, was eliminating any 22 exposure that it had on those positions? 23 A. They would no longer have exposure on 24 those positions, I assume, after they have 25 transferred them.</p>	<p>1 D. McIsaac 2 Q. And would that be to the benefit of 3 customers, to eliminate exposure to the -- to a 4 SIPC trustee's estate? 5 MR. OXFORD: Objection to the form. 6 A. It would benefit customers if you were 7 paid properly for them, yes. So if you took 8 exposure off and received consideration, then it 9 would be good. If you just took exposure off 10 and received no consideration, I don't know if 11 it would be good. You'd have to analyze each 12 one separately. 13 Q. That would depend on the value of the 14 positions at any given point in time, is that 15 fair to say? 16 MR. OXFORD: Objection to the form. 17 A. It would depend on the value of the 18 positions, the marketplace, you know, what -- 19 what the impact of disposing of those positions 20 would have or the downside it could have. 21 Q. If there's net exposure on a set of 22 positions that you transfer, would it be 23 irrational to do that for no consideration? 24 MR. OXFORD: Objection to the form. 25 A. When you say "net exposure," there's</p>

Page 82	Page 83
<p>1 D. McIsaac</p> <p>2 exposure, so would it be rational to transfer</p> <p>3 them for no consideration? I don't know at the</p> <p>4 point in time. I don't know -- the worst case</p> <p>5 you could be is zero if you're long. So not</p> <p>6 getting anything for them, if you liquidate</p> <p>7 them, gave them away for nothing or had them</p> <p>8 liquidated, you would be at the same place, and</p> <p>9 if the margin would cover any potential losses,</p> <p>10 you might be better off having the OCC liquidate</p> <p>11 them than give them away for free.</p> <p>12 Q. You testified earlier that you could</p> <p>13 never guarantee that the margin would be</p> <p>14 sufficient to cover exposures in a liquidation;</p> <p>15 is that right?</p> <p>16 MR. OXFORD: Objection. Misstates</p> <p>17 testimony.</p> <p>18 A. Yes, I believe I said something to</p> <p>19 that effect.</p> <p>20 Q. So would you agree that if you have</p> <p>21 short positions, there's exposure that can't be</p> <p>22 eliminated entirely unless you transfer the</p> <p>23 positions?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 Misstates his testimony.</p>	<p>1 D. McIsaac</p> <p>2 A. They could be liquidated the next day</p> <p>3 and you would relieve your exposure.</p> <p>4 Q. I'm showing you an exhibit that's been</p> <p>5 marked 676A. Do you recognize this document?</p> <p>6 A. Yes, I believe I've seen this before.</p> <p>7 Q. Did you review it in preparing for</p> <p>8 today's deposition?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Did you review it at the time that you</p> <p>11 prepared your report?</p> <p>12 A. Yes.</p> <p>13 Q. If you could turn to Exhibit 1 of this</p> <p>14 document. You see that Exhibit 1 shows the</p> <p>15 margin requirements on dates from 9/15/2008</p> <p>16 through 9/19/2008?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And just so that I don't force</p> <p>19 you to take this out of context, you should read</p> <p>20 the paragraph where he describes what the</p> <p>21 margin -- which margin requirements he's</p> <p>22 referring to. So if you look at --</p> <p>23 MR. OXFORD: Paragraph 6, I think.</p> <p>24 Q. -- paragraph 6 of Mr. Jones'</p> <p>25 declaration, he says, "Exhibit 1 hereto shows</p>
Page 84	Page 85
<p>1 D. McIsaac</p> <p>2 for each day from September 15 through September</p> <p>3 19, 2008, the total requirement at the open of</p> <p>4 business for each day across all of LBI's OCC</p> <p>5 accounts, the total value of collateral of the</p> <p>6 open business of each day across all of LBI's</p> <p>7 OCC accounts, and the excess or deficit at the</p> <p>8 open of business on each day across all of LBI's</p> <p>9 OCC accounts." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that on between September</p> <p>12 15 and September 16 the margin requirement for</p> <p>13 the OCC accounts went from \$789,583,205 to</p> <p>14 \$1,359,001,075?</p> <p>15 A. Yes, I see that.</p> <p>16 Q. Would you agree with me that's an</p> <p>17 increase of over \$500 million in a single day?</p> <p>18 A. Yes.</p> <p>19 Q. If you look two lines down from</p> <p>20 September 17, 2008 to September 18, 2008, do you</p> <p>21 see that the margin requirement went from</p> <p>22 \$1,400,000,000 and change to \$2 billion, over \$2</p> <p>23 billion, do you see that?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. Would you agree that that's over a</p>	<p>1 D. McIsaac</p> <p>2 \$600 million increase in a single day?</p> <p>3 A. Yes.</p> <p>4 Q. You said a moment ago that the -- that</p> <p>5 LBI could have liquidated the following day and</p> <p>6 eliminated their exposure on their OCC accounts.</p> <p>7 Do you recall that testimony?</p> <p>8 A. Yes.</p> <p>9 Q. Would LBI have been able to know for</p> <p>10 certain that it would not -- strike that. Would</p> <p>11 LBI know for certain what the cost of</p> <p>12 liquidating the account on the following day</p> <p>13 would have been by looking at that day's margin</p> <p>14 requirements?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. Let me make sure I have your question</p> <p>17 clear. You're asking me as of the close of</p> <p>18 business the 19th, would LBI have known what the</p> <p>19 cost would be to close out their positions on</p> <p>20 top day the 22nd?</p> <p>21 Q. Yes.</p> <p>22 A. They would know what the closing price</p> <p>23 was on the 19th and use that as I guess a proxy</p> <p>24 for what, you know, for what they could possibly</p> <p>25 close it out and do some kind of an</p>

Page 86	Page 87
<p>1 D. McIsaac</p> <p>2 extrapolation on how they might impact the</p> <p>3 market.</p> <p>4 Q. Okay. And if the margin requirement</p> <p>5 is a proxy for exposure and increased by \$500</p> <p>6 million, as it had on two other days this week,</p> <p>7 would you agree that using Friday's close of</p> <p>8 business number may not be an accurate way to</p> <p>9 determine what the cost would be on Monday of</p> <p>10 closing out the positions?</p> <p>11 MR. OXFORD: Objection. Form.</p> <p>12 A. It's very difficult to determine that</p> <p>13 because I believe the 19th was a triple-witching</p> <p>14 day, so a lot of the exposures that were sitting</p> <p>15 there would have been closed out close of</p> <p>16 business. I don't know if this margin</p> <p>17 requirement is at the end of the day or the -- I</p> <p>18 believe this is the beginning of the day on the</p> <p>19 19th.</p> <p>20 Q. Uh-huh.</p> <p>21 A. So when all the options that they --</p> <p>22 that were in their account were called, anything</p> <p>23 that was expiring on the 19th would have had an</p> <p>24 impact on this amount. I don't know the balance</p> <p>25 or the size of the positions they had that were</p>	<p>1 D. McIsaac</p> <p>2 expiring on the 19th, but again, I believe if I</p> <p>3 remember Mr. Leitner's testimony, he looked at</p> <p>4 the margin as being a proxy for the most they</p> <p>5 could lose or the most that would cover</p> <p>6 Barclays' exposure.</p> <p>7 So, by looking at that, my guess this</p> <p>8 would be the worst place LBI would be in if they</p> <p>9 exposed. So if they were looking to transfer</p> <p>10 their assets, this might be a starting point for</p> <p>11 negotiations but not necessarily the ending</p> <p>12 point.</p> <p>13 Q. Okay. Whose responsibility do you</p> <p>14 understand it was to settle the trades that</p> <p>15 occurred over the expiration weekend, Barclays</p> <p>16 or Lehman's?</p> <p>17 A. I believe it was Lehman's.</p> <p>18 Q. You believe it was Lehman's?</p> <p>19 A. Barclays didn't sign the agreement</p> <p>20 until the 22nd. I believe they all settle over</p> <p>21 the weekend.</p> <p>22 Q. And when would the pays and collects</p> <p>23 from a weekend expiration be due?</p> <p>24 A. Monday morning, I believe, because you</p> <p>25 can't pay anything on the weekend.</p>
Page 88	Page 89
<p>1 D. McIsaac</p> <p>2 Q. And it's your understanding that</p> <p>3 Lehman is the party that settled those weekend</p> <p>4 expirations?</p> <p>5 A. I believe any settlements would have</p> <p>6 had to occur because Barclays didn't own them at</p> <p>7 that point in time. So all of the settlement</p> <p>8 transactions would have had to go through</p> <p>9 Lehman, and I believe Lehman settled them all.</p> <p>10 To my knowledge, I think that's what happened.</p> <p>11 Q. If that's inaccurate, would that</p> <p>12 affect your opinion in any way?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. Not necessarily, because I don't know</p> <p>15 the size of it, although I thought I -- I</p> <p>16 believe I saw some information that showed the</p> <p>17 pay/collects being a significant pay-back to</p> <p>18 Lehman on the 22nd or pay-back to the -- to the</p> <p>19 holder of the account on the 22nd.</p> <p>20 Q. Would it be rational for Barclays to</p> <p>21 accept the obligations on options expiring over</p> <p>22 the weekend of September 20th and 21st for short</p> <p>23 positions and yet not acquire the rights for any</p> <p>24 profit and loss on long positions?</p> <p>25 MR. OXFORD: Object to the form.</p>	<p>1 D. McIsaac</p> <p>2 A. I'm not sure -- please rephrase it.</p> <p>3 I'm not sure where -- what the question is</p> <p>4 asking.</p> <p>5 Q. Sure. There were long positions and</p> <p>6 short positions both in LBI's --</p> <p>7 A. Right.</p> <p>8 Q. -- OCC accounts; is that right?</p> <p>9 A. Right. Okay. Yes.</p> <p>10 Q. And any short positions that were</p> <p>11 exercised over the weekend of September 22 --</p> <p>12 20th and 21st would have resulted in a loss to</p> <p>13 the clearing member; is that right?</p> <p>14 MR. OXFORD: Objection to form.</p> <p>15 A. Not necessarily. If they had the</p> <p>16 assets to deliver against the ex -- the</p> <p>17 exercise, there would be no loss.</p> <p>18 Q. And if they didn't have the assets to</p> <p>19 deliver and they had to acquire them at the then</p> <p>20 market rates?</p> <p>21 A. If they had marked them --</p> <p>22 MR. OXFORD: Wait. I'm sorry. Can</p> <p>23 you just let me get my objection in?</p> <p>24 THE WITNESS: I'm sorry.</p> <p>25 MR. OXFORD: I'll object to the form.</p>

Page 90	Page 91
<p>1 D. McIsaac 2 You can answer. Thank you. 3 A. If they would have been marking their 4 positions to market, they would have, I assume 5 already, recorded those losses. 6 Q. When do you think that Lehman recorded 7 the losses that occurred over the weekend of 8 September 20th and 21st? 9 A. I believe you would record those 10 effective the 19th because that's the option 11 expiration date. At that point in time, you 12 know what your locked-in is on your gains and 13 losses. You would do that on a daily basis -- 14 Q. And when -- 15 A. -- of the market movement. 16 Q. I apologize for interrupting you. 17 And when would Lehman make the payment 18 on those trades? 19 A. I would assume the next business day. 20 Q. And so you're assuming that Lehman 21 paid any amounts due to settle short options 22 that were in its account over the weekend of 23 September 20th and -- 20th and 21st? 24 MR. OXFORD: I'll object to the form. 25 A. I assumed that not everything is cash</p>	<p>1 D. McIsaac 2 settled so they might have delivered securities 3 against those exercised calls or puts, and on 4 the cash settle piece, that the pay/collect 5 would occur on Monday morning. And if they 6 didn't have securities to deliver, they would 7 have to go out and buy the securities and make a 8 delivery. 9 MR. OXFORD: Trish, we've been going 10 about another hour. I don't know if this is 11 a good time to take a five-minute break. 12 MS. BLOOMER: This is actually a good 13 time. That would be fine. Off the record. 14 THE VIDEOGRAPHER: The time is 11:36. 15 This is the end of the tape labeled number 16 2. We're going off the record. 17 (Recess.) 18 THE VIDEOGRAPHER: This is the start 19 of the tape labeled number 3. The time is 20 11:57. We are back on the record. 21 BY MS. BLOOMER: 22 Q. Mr. McIsaac, could you turn in your 23 report to page 7, please. The first full 24 sentence at the top of the page -- 25 A. Give me one second. One second.</p>
Page 92	Page 93
<p>1 D. McIsaac 2 Q. Sure. 3 A. Okay. 4 Q. The first full sentence at the top of 5 the page, you say, "The circumstances of the 6 transaction between Lehman and Barclays do not 7 change my opinions in this matter." 8 What circumstances were you referring 9 to in that sentence? 10 A. The timing of everything happening, 11 the -- I think Mr. Leitner was talking about how 12 much time, you know, it took the quickness of 13 the negotiations. 14 Q. Any other circumstances that you 15 were -- 16 A. No. I mean, the marketplace, you 17 know, everything that was happening at the time. 18 Q. Anything other than the timing and the 19 marketplace that you were -- that you had in 20 mind when you said the circumstances of -- 21 A. No, I think just the market, what was 22 happening in the market at the time -- 23 I'm sorry. 24 Q. Are there any circumstances other than 25 the timing and the marketplace that you had in</p>	<p>1 D. McIsaac 2 mind when you said "the circumstances of the 3 transaction between Lehman and Barclays do not 4 change my opinions in this matter"? 5 A. No. Basically that was it. 6 Q. With respect to the timing, what was 7 your understanding of the circumstances? 8 A. I believe that it was negotiated in 9 a -- it didn't have, you know, three or four 10 months of negotiations, as far as I know. It 11 was done fairly quickly, although I don't know 12 how much time and how much due diligence was 13 done along the way. 14 Lehman had been in trouble for a 15 while, so I'm assuming a lot of firms were doing 16 some things, reviewing it to determine, you 17 know, if there was a, you know, a good place to 18 go in and buy and, you know, there possibly was 19 the Lehman executives might have been shopping 20 the firms. I don't know what happened, but I do 21 know that a lot of things happened fairly 22 quickly. 23 Q. Were you assuming that Barclays had 24 plenty of time to do due diligence before 25 settling on the terms of the transaction it was</p>

Page 94	Page 95
<p>1 D. McIsaac 2 willing to enter into? 3 MR. OXFORD: Objection to the form. 4 A. I don't know how much time Barclays 5 had to do due diligence. I don't know how long 6 they were talking to Lehman and what information 7 they had. 8 And they were buying pretty much the 9 whole entity, so, you know, it's not like they 10 had to do due diligence on certain things. It 11 was a viable entity. It wasn't capital -- it 12 had adequate capital. You know, it didn't 13 appear that they were buying the broker-dealer, 14 that there was that much of a concern around it. 15 The customers were the customers. I don't know 16 if there was any major concern on the customers 17 they had. 18 Q. Do you have an understanding of what 19 the value of the entity was that Barclays was 20 acquiring? 21 MR. OXFORD: Objection to the form. 22 A. I believe if I looked at the August 23 Focus that was not filed, it showed a net -- a 24 net equity of I want to say 3 to 5 billion, if I 25 remember properly, correctly.</p>	<p>1 D. McIsaac 2 Q. What was that number? 3 A. 3 to 5 billion. 4 Q. What, in your opinion, would be a 5 typical amount of time for an entity to take 6 doing due diligence on an acquisition the size 7 of this one? 8 MR. OXFORD: Objection to the form. 9 A. I don't know how much time it would 10 take. They ended up buying certain businesses, 11 the customers' businesses, they bought assets 12 like the buildings, things of that nature, and 13 they bought some positions. How much time, I 14 don't know. I don't know how much time they 15 spent knowing what was going on. 16 In the Lehman case, you know, Lehman 17 was not in, from what I understand, capital, 18 severe capital -- it was a liquidity crunch, and 19 Lehman was having problems getting the 20 information, getting the money they needed to 21 support their assets. It didn't mean they 22 didn't have good assets, it didn't mean the 23 business was crumbling, it just meant they were 24 having a liquidity crunch. 25 I worked at Drexel. I saw what</p>
Page 96	Page 97
<p>1 D. McIsaac 2 happened to Drexel. It didn't necessarily mean 3 the broker-dealer had a problem. There was 4 illiquidity at the parent company, and that 5 trickles down. 6 Q. Do you mean to suggest that there was 7 not a significant amount of risk that Barclays 8 was encountering in acquiring this business? 9 MR. OXFORD: Object to the form. 10 A. I didn't say there wasn't a 11 significant amount of risk. I think there was a 12 discernible amount of risk. I think that buying 13 customer positions, customer business, not that 14 risky a business. Looks like they didn't buy 15 the prime broker, which would have been the more 16 risky of the customer businesses. 17 Futures clearing is not what I would 18 consider a very risky business. They bought 19 certain assets, again, not everything that was 20 what I consider ultimately, you know, extremely 21 risky. 22 Q. You're not an expert in risk 23 management or risk assessment; is that right? 24 MR. OXFORD: Objection to the form. 25 A. General knowledge of risk I have. I'm</p>	<p>1 D. McIsaac 2 not a quant. I don't, you know, determine the 3 value what risk for a firm. I understand what 4 assets are risky, what assets are not risky at a 5 firm, what businesses are risky, what businesses 6 are not risky, and I think, you know, in a firm 7 of this size, it was a top, you know, three or 8 four broker-dealer in the country for a long 9 period of time. So, yes, there were risks 10 there, but I think they were quantifiable. 11 Q. Do you know how long it would take to 12 assess the risk profile in a set of equities 13 positions and options positions that was \$70 14 billion on the long side and \$69 billion on the 15 short side? 16 MR. OXFORD: Object to the form. 17 A. I don't think equities were the total 18 70 and 69. I think there were a portion of 19 that. I think a large portion of that inventory 20 was government securities. 21 Q. Do you know how much government 22 securities were in that versus equities versus 23 exchange-traded derivatives? 24 A. I believe at one point in time I saw 25 something that sort of broke it down, but I</p>

Page 98	Page 99
<p>1 D. McIsaac 2 don't remember exactly, but I believe equities 3 were probably maybe 10 billion range. 4 Q. Would you have experience that would 5 qualify you to assess the risk profile 6 associated with a set of positions of that size? 7 MR. OXFORD: Object to the form. 8 A. On a daily basis they are required to 9 maintain capital. They have to assess their 10 capital every day. Part of their capital is 11 assessing the risk. They were on a daily basis 12 assessing the risk of their capital. You could 13 have easily used that information to determine 14 where the risk was and, you know, from that 15 standpoint, yes, determine the risk. When I 16 file reports, I'm looking at the risk of the 17 firm. 18 Q. When you described the circumstances 19 of the transaction between Lehman and Barclays 20 on page 7 of your report, did you consider among 21 those circumstances the options that Lehman had 22 to the deal with Barclays? 23 MR. OXFORD: Object to the form. 24 A. The options that Lehman had? I guess 25 Lehman could have decided to sell or not sell.</p>	<p>1 D. McIsaac 2 Q. Could they have decided to sell to a 3 different entity? 4 A. I'm sure they could have. 5 Q. Could you pull Exhibit 442 out. 6 That's the sale hearing transcript. 7 A. Uh-huh. 8 Q. And turn to page 101. 9 A. Yes. 10 Q. If you read the first three paragraphs 11 or, you know, if you need to read a little bit 12 more to get context. 13 (Document review.) 14 A. Okay. 15 Q. In the second paragraph, it says, 16 "And, yet, he would say nobody has expressed an 17 interest to step into the shoes of -- excuse me, 18 step into the shoes of Barclays, your Honor." 19 The next paragraph says, "Lehman has not 20 received any other interest since the 21 commencement of the Chapter 11 cases." And it 22 goes on to say, "If Lehman was approached by 23 another potential buyer that he would consider 24 the offer, provided that the company had 25 sufficient liquidity to operate the business</p>
Page 100	Page 101
<p>1 D. McIsaac 2 without jeopardizing customer accounts. That 3 has not happened, your Honor. So it is almost 4 academic." Do you see that? 5 A. Yes, I do. 6 Q. Had you read this testimony in 7 preparing for your -- or, in preparing your 8 expert report? 9 A. I read this report in the -- when I 10 first started working with the Trustee regarding 11 the motion, the motion on the 3-3. 12 Q. You testified a moment ago that you 13 were sure Lehman could have sold the assets to a 14 different buyer. Does this refresh your 15 recollection at all on the circumstances that 16 Lehman was facing at the time? 17 A. This says they have no buyers. It's 18 Chapter 11. The Fed was providing them with 19 liquidity earlier in the week before Barclays 20 stepped into the shoes. The Fed could have 21 continued to provide liquidity while they were 22 looking for another purchaser. 23 That has happened before. If they 24 stepped in the shoes once before, I assume 25 things could have been done, still been done in</p>	<p>1 D. McIsaac 2 that fashion. 3 Q. Do you agree that the court is being 4 told at the September 19th sale hearing that it 5 is almost academic for Lehman to find another 6 potential buyer at that point? 7 A. That's what it looks like here, yes, 8 but I -- 9 Q. And if you -- 10 A. Excuse me. But it also says they 11 weren't marketing the firm in the first 12 paragraph on that page. So maybe if they did, 13 they might have been able to find other buyers. 14 Q. Okay. Can you read the second 15 paragraph for me? "That notwithstanding the 16 lack of a specific program for marketing, the 17 sale of Lehman's broker-dealer business has been 18 known worldwide. And, yet, he would say nobody 19 has expressed an interest to step into the shoes 20 of -- excuse me, step into the shoes of 21 Barclays, your Honor." 22 A. Uh-huh. 23 Q. Do you see that? 24 A. Yes. 25 Q. Do you agree that the speaker in this</p>

Page 102	Page 103
<p>1 D. McIsaac 2 testimony is suggesting that they were not able 3 to find another buyer for the business? 4 A. No, I believe he's saying that it was 5 known that the business might be for sale and 6 nobody else has stepped up, but I believe the 7 first paragraph says that they were not going 8 out and marketing the sale of the business. 9 Q. Do you have any understanding of why 10 they weren't going out and marketing the 11 business? 12 A. No, I do not. 13 Q. Could it be because they didn't have 14 time to market the business because the 15 transaction needed to close by the following 16 Monday? 17 A. This says the business has been known 18 worldwide, so I don't know why it had to 19 close -- I don't know what happened that made it 20 have to close within a week's period. 21 Q. Okay. 22 A. If I looked at the financial 23 statements that were not filed but prepared, it 24 looked like they had adequate capital for the 25 broker-dealer.</p>	<p>1 D. McIsaac 2 Q. Okay. Can you turn to page 73. If 3 you review where the court asks a question in 4 the middle of the page, "In order for this 5 transaction to be optimally closed from the 6 perspective of SIPC, when should it close? Does 7 it need to close this weekend before the markets 8 open on Monday?" 9 A. I'm sorry, I lost where you're 10 reading. 11 Q. Page 73. 12 A. Yes, I'm on 73. I see, "The Court: 13 Let me ask a question." 14 Q. Oh, the next statement. 15 A. I'm sorry. 16 (Document review.) 17 A. Uh-huh. Okay. 18 Q. So you see where Mr. Caputo says to 19 the court, in response to the court's question, 20 "As soon as possible it needs to close. The 21 sooner the better." Do you see that? 22 A. Yes. 23 Q. On the following page, the court asks, 24 "Would it be your position on behalf of your 25 client that, assuming the transaction, the sale</p>
Page 104	Page 105
<p>1 D. McIsaac 2 transaction that has been proposed to me today 3 is approved, that the approval should happen 4 before the close of today's hearing? In other 5 words, we should stay here as late as we need to 6 in order to get this done?" And Mr. Caputo 7 says, "Yes, your Honor. That would be our 8 recommendation." Do you see that? 9 A. Yes. 10 Q. Does this suggest to you that the 11 transaction under contemplation did not need to 12 close by Monday, September 22, 2008? 13 A. I believe in the prior response by Mr. 14 Caputo he said as soon as possible, and nothing 15 was forcing Barclays to close this agreement. 16 They did not have to do it if they didn't think 17 they had done sufficient due diligence to -- to 18 mandate a purchase of an asset like this. 19 Q. Would you agree that at this sale 20 hearing, which you read the transcript of, the 21 parties were telling the court that it was 22 critical to get this deal done within a matter 23 of days? 24 MR. OXFORD: Object to the form. 25 A. I believe that's what was said here.</p>	<p>1 D. McIsaac 2 I don't -- I haven't read anything here, or I'd 3 have to go back and read the whole thing, of 4 what Barclays was saying why it would be 5 critical for Barclays to get it done. 6 Q. Do you believe that you are in a 7 better position than the parties who were 8 negotiating this deal and representing it to the 9 court to determine the urgency of the closing of 10 this transaction? 11 MR. OXFORD: Object to the form. 12 A. No, I think the urgency was on 13 Lehman's side, not necessarily on Barclays' 14 side. Barclays, if they didn't feel they had 15 done enough due diligence and didn't feel they 16 had adequate time to review it, didn't have to 17 go through with it at that point in time. 18 Q. Would you agree that in a transaction 19 where one party has an urgency to complete a 20 deal and another party doesn't, that there is a 21 disparity in bargaining power as between those 22 two entities? 23 MR. OXFORD: Objection. 24 A. Yes, but I'm not sure which way. If I 25 don't sell it, what happens? I'm out of</p>

Page 106	Page 107
<p>1 D. McIsaac 2 business. If I sell it, I'm still out of 3 business. 4 So if the parent company is selling 5 the business or if the broker-dealer, they're 6 selling the business, they have a decision to 7 whether or not they sell it or not sell it. You 8 know, this isn't a sale where I'm trying to sell 9 something and, you know, just get rid of some 10 bad assets and go on. 11 Q. And we saw earlier that the OCC had 12 threatened to liquidate LBI's accounts if it 13 didn't close this transaction by the 22nd of 14 September; is that right? Do you recall that? 15 A. Yes, but the one thing the OCC said 16 they would liquidate was that the customer and 17 proprietary or just the customer -- just 18 proprietary accounts? 19 Q. Sure, we can look at the exhibit 20 together. It was Exhibit 630. 21 A. Uh-huh. 22 Q. And it was on the second page under 23 paragraph 3, and it says, "OCC would need to 24 immediately liquidate and close out the LBI 25 accounts, and is preparing to do so."</p>	<p>1 D. McIsaac 2 A. Right, but I, after -- I don't 3 remember which -- I think you showed me this and 4 then you showed me something from the CME, and 5 the CME just liquidated the proprietary 6 accounts. It didn't liquidate the customers. 7 Q. The OCC wasn't drawing a distinction 8 in that, do you see that? 9 A. Well, I don't know if they were -- it 10 says "the accounts," so I'm assuming they meant 11 all, but it looks like, you know, they could 12 have drawn the same distinction that the CME did 13 and just liquidate the proprietary business if 14 they were concerned. 15 Q. They could have? 16 A. Yes. 17 Q. But that's not what they're indicating 18 in this paragraph, would you agree? 19 A. That's not what it looks like the 20 counsel was stating. 21 Q. If the Lehman Trustee believed that a 22 liquidation of the OCC accounts would result in 23 a depletion of all of the posted margin, would 24 it have been rational for the LBI Trustee to 25 agree to transfer those accounts to Barclays in</p>
Page 108	Page 109
<p>1 D. McIsaac 2 exchange for the posted margin? 3 MR. OXFORD: Objection to the form. 4 Assumes facts not in evidence. 5 A. If they looked at it and I guess 6 assumed that they would lose whatever the number 7 was, let's say \$2 billion, or transferred 8 something like \$2 billion, yes, it would make, I 9 guess, sense to do it or, you know, if there was 10 a better good to be had by it, but I don't know 11 if that analysis was done. You said it was a 12 very short time, so I'm not sure if they had 13 time to analyze that. 14 Q. If you turn in your report to page 6, 15 you say in paragraph 18 that, "In addition to 16 the net asset value, I would expect a purchaser 17 to pay a premium based on the anticipated 18 earnings of the clearing business." Do you see 19 that? 20 A. Uh-huh. 21 Q. Would you continue to have that 22 expectation in a circumstance in which there was 23 only one purchaser willing to acquire a 24 business? 25 A. I would guess their negotiating powers</p>	<p>1 D. McIsaac 2 would not be the same, but I would still expect 3 some payment for an ongoing business that was 4 going to reap benefits for the purchaser. 5 Certainly the purchaser would want to get it for 6 nothing. I think the seller would want to get 7 some value for the assets they were selling. 8 Q. But as you said, if the seller 9 believed that it wasn't going to get value in 10 the alternative, then it would have been 11 rational to sell it for nothing in order to 12 preserve the customer positions; is that right? 13 MR. OXFORD: Object to the form. 14 A. I don't think I said that. 15 I'm sorry, could you read back my -- I 16 don't think I said that. 17 Q. Earlier I asked you the question: "If 18 the Lehman Trustee believed that a liquidation 19 of the OCC accounts would result in a depletion 20 of all of the posted margin, would it have been 21 rational for the LBI Trustee to agree to 22 transfer those accounts to Barclays in exchange 23 for the posted margin?" And you said, "If they 24 looked at it and I guess assumed that they would 25 lose whatever the number was, let's say \$2</p>

Page 110	Page 111
<p>1 D. McIsaac 2 billion, or transferred something like \$2 3 billion, yes, it would make, I guess, sense to 4 do it or, you know, if there was a better good 5 to be had by it, but I don't know if that 6 analysis was done." 7 A. Yes. 8 Q. You also said, just for the sake of 9 completeness, you said it was a very short time 10 so I'm not sure if they had time to analyze 11 that. 12 A. The Trustee in that case. 13 Q. Yes. 14 A. Yes. 15 Q. So the question and answer that I just 16 asked you was, earlier I asked you the question, 17 if the Lehman Trustee believed that a 18 liquidation of the OCC accounts would result in 19 a depletion of all of the posted margin, would 20 it have been rational for the LBI Trustee to 21 agree to transfer those accounts to Barclays in 22 exchange for the posted margin, and you said 23 that if they looked at it and, I guess, assumed 24 that they would loose whatever the number was 25 and so on.</p>	<p>1 D. McIsaac 2 A. Right. 3 MR. OXFORD: Hold on. Hold on. Is 4 there a question? You just have been 5 reading from the record, Trish, which you're 6 free to do, but if you could ask Mr. McIsaac 7 a question, then he could answer it. I 8 think that's the traditional way to go. 9 Q. If the Lehman Trustee believed that a 10 liquidation of the OCC account would result in a 11 depletion of all of the posted margin, would it 12 have been rational for the LBI Trustee to agree 13 to transfer those accounts to Barclays in 14 exchange for that margin? 15 MR. OXFORD: Objection. Asked and 16 answered. 17 You can answer it again. 18 A. I think I answered that question. You 19 posed another question when you went back to 20 read that. 21 Q. Unfortunately, I'm not able to find it 22 online. 23 A. Okay. That's the question you asked 24 that I didn't think was the same as that 25 question.</p>
Page 112	Page 113
<p>1 D. McIsaac 2 Q. Are acquirers, in your experience, 3 generally willing to pay a premium if they are 4 the only potential acquirer for a business and 5 they know that going into a negotiation? 6 MR. OXFORD: Objection to the form. 7 A. I haven't been in negotiations where 8 that would be the case, but you still would 9 expect to pay some value for getting value. I 10 would think the seller would want some value. 11 Q. But a premium is valued -- what do you 12 define a premium to mean? 13 MR. OXFORD: Object to the form. 14 A. In my experience, you bought 15 businesses and paid a premium based on how much 16 you believe that that business will earn for you 17 over the next few years, and then that's the 18 base price plus you pay the net asset value of 19 the business you're buying if you're just buying 20 bits and pieces of the business. 21 So you pay a premium based on, you 22 know, potential benefits to your firm. I 23 believe in some of the pages I was reading 24 through here in the futures world, I think 25 people doing the due diligence believed that</p>	<p>1 D. McIsaac 2 they would make \$250 million in revenues over 3 the next year. So there's a lot of value there, 4 so maybe they saw value where other people 5 didn't. 6 Q. And would a reasonable -- would a 7 rational acquirer be willing to pay premium if 8 it believed paying a premium wasn't necessary to 9 close the deal? 10 MR. OXFORD: Object to the form. 11 A. I would assume they would try to get 12 value for nothing if they could. So if you're 13 saying would they pay a premium if they didn't 14 have to, that would be negotiated and whether or 15 not the seller would be willing to sell it for 16 that price. 17 Q. Can you turn to page 23 of your 18 report, please? Actually, if you could start at 19 page 22. I'd like to ask you some questions 20 about paragraphs 44 -- 54 and 55. 21 (Document review.) 22 A. Okay. 23 Q. In these two paragraphs you're talking 24 about the proprietary options positions that LBI 25 held in accounts at the OCC; is that right?</p>

Page 114	Page 115
<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. At the end of paragraph 55, you say,</p> <p>4 "Certainly a rational seller would not include</p> <p>5 margin in a deal unless it was being compensated</p> <p>6 dollar for dollar." Do you see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Can you explain what you mean by</p> <p>9 "compensated dollar for dollar"?</p> <p>10 A. They were giving other assets and I</p> <p>11 would assume they would be compensated for the</p> <p>12 assets. So if the value of the assets they were</p> <p>13 giving was \$100, I would expect them to be</p> <p>14 compensated \$100.</p> <p>15 The deal was to buy the portfolio of</p> <p>16 assets, not the margin that's posted to make</p> <p>17 sure that the firm complies with its obligations</p> <p>18 to the OCC.</p> <p>19 Q. So if there was, for example, a</p> <p>20 billion dollars in the proprietary options</p> <p>21 account posted as margin with the OCC, you</p> <p>22 believe that it would have been irrational for</p> <p>23 the Trustee to agree to transfer that account to</p> <p>24 Barclays for anything less than that same</p> <p>25 amount?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form of the</p> <p>3 question.</p> <p>4 A. I would expect the seller to look at</p> <p>5 the portfolio of assets that they were selling</p> <p>6 and to get the value for the portfolio of</p> <p>7 assets. So if they were selling long positions</p> <p>8 and short positions, I would expect them to get</p> <p>9 the net asset value for that, and if the buyer</p> <p>10 wanted the margin that was posted in addition, I</p> <p>11 would expect them to get the net asset value for</p> <p>12 the margin.</p> <p>13 Q. Just so that I understand your</p> <p>14 opinion, so if the positions in an account are</p> <p>15 worth negative a billion dollars on net, and the</p> <p>16 margin posted in an account were a billion</p> <p>17 dollars, are you suggesting that it would have</p> <p>18 been rational for the Trustee to transfer the</p> <p>19 account with the margin because they were</p> <p>20 offsetting positives and negatives?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 Misstates the witness's testimony.</p> <p>23 You can answer again.</p> <p>24 A. I think what I said is there was a</p> <p>25 portfolio of assets, and you would look at the</p>
Page 116	Page 117
<p>1 D. McIsaac</p> <p>2 net asset value of the portfolio of assets,</p> <p>3 which was the long positions and the short</p> <p>4 positions. And I don't look at it just as the</p> <p>5 options positions, I'd look at it as the whole</p> <p>6 inventory positions that they were purchasing,</p> <p>7 and they would pay value for what they were</p> <p>8 buying. If you were to include the posted</p> <p>9 margin, I would expect to pay extra value for</p> <p>10 that.</p> <p>11 Q. Dollar-for-dollar extra value?</p> <p>12 A. That's where I would start at least,</p> <p>13 yes.</p> <p>14 Q. Would it be irrational to accept</p> <p>15 anything less than dollar-for-dollar</p> <p>16 compensation for the posted margin?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. That would be at the point in time you</p> <p>19 would negotiate what you want to sell it for. I</p> <p>20 would think it would be a negotiating point and</p> <p>21 it would be expressed in the contracts what you</p> <p>22 were buying and what you were receiving and how</p> <p>23 much you were paying for it.</p> <p>24 Q. Would it be rational for LBI to</p> <p>25 negotiate for compensation less than</p>	<p>1 D. McIsaac</p> <p>2 dollar-for-dollar compensation for the posted</p> <p>3 margin?</p> <p>4 MR. OXFORD: Objection to the form.</p> <p>5 A. I don't think so, because if they were</p> <p>6 getting net asset value, then you'd be almost</p> <p>7 providing the downside protection for the</p> <p>8 acquirer.</p> <p>9 Q. And the net asset value in the terms</p> <p>10 of this transaction was what?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 A. I believe there was 40 something</p> <p>13 billion dollars of assets, less than that in a</p> <p>14 repo liability that was assumed by Barclays, I</p> <p>15 guess, and the long option value that I thought</p> <p>16 was about \$300 million.</p> <p>17 Q. So you are excluding from your</p> <p>18 equation the negative value of the LBI affiliate</p> <p>19 positions that were in the firm account at the</p> <p>20 OCC?</p> <p>21 A. I believe they weren't buying the</p> <p>22 affiliates business. That's what I've seen. So</p> <p>23 I thought they were negotiating to buy LBI's</p> <p>24 business and not the affiliates positions.</p> <p>25 Q. They were taking settlement</p>

<p style="text-align: right;">Page 118</p> <p>1 D. McIsaac 2 responsibility for the affiliate positions as 3 well, you agree with that? 4 A. From the TAA, yes. 5 Q. Where do you think Barclays was going 6 to turn to recover the losses on the short 7 affiliate positions in that account? 8 MR. OXFORD: Object to the form. 9 A. I don't know where they would turn. 10 I'm not sure why they would have assumed them. 11 Q. You saw that they assumed settlement 12 responsibility for all of the positions at the 13 OCC, correct? 14 A. I see that they assumed it, yes. 15 Q. Okay. Would it have been rational for 16 Barclays to assume settlement responsibility for 17 those positions knowing that LBI was in SIPC 18 proceedings and would not be able to reimburse 19 it for the costs of liquidating those positions? 20 MR. OXFORD: Object to the form. 21 A. I think it would have been rational to 22 negotiate what you were doing with those 23 positions and, if you had to take over clearance 24 and settlement of them, negotiate how you were 25 going to be remunerated for that.</p>	<p style="text-align: right;">Page 119</p> <p>1 D. McIsaac 2 Q. Would it be rational for the Trustee 3 to agree to transfer the posted margin that 4 secured those positions in exchange for Barclays 5 taking on the exposure for those positions? 6 MR. OXFORD: Objection to the form. 7 Asked and answered. 8 You can answer again. 9 A. I don't think it would have been to 10 transfer \$2 billion of margin to cover a 11 billion-dollar loss. I don't think you would 12 transfer that much, no. 13 Q. How about 1 billion, would that have 14 been rational for the Trustee to transfer? 15 A. It might have been. 16 MR. OXFORD: Object to the form. 17 THE WITNESS: Sorry. 18 Q. It might have been? 19 A. It might have been. At that point in 20 time, if they negotiated it and -- and, you 21 know, that's what the parties decided. 22 Q. So it's not your opinion that it would 23 have been irrational under any circumstances for 24 Lehman or the LBI Trustee to transfer posted 25 margin to Barclays in exchange for taking</p>
<p style="text-align: right;">Page 120</p> <p>1 D. McIsaac 2 settlement responsibility for the affiliate 3 positions; is that right? 4 MR. OXFORD: Object to the form. 5 A. I believe in my report I talked about 6 the proprietary positions. If they're assuming 7 affiliate clearance and settlement of affiliates 8 positions, that would be something they should 9 negotiate. You know, the parties there would 10 negotiate it and whatever they thought was valid 11 would be valid. 12 Would it be out of the realm to say, 13 yes, give me the market value of that? No. 14 Q. Would that be a rational resolution, 15 to give them the market value of that? 16 MR. OXFORD: Object to the form. 17 A. It would be rational to say this is 18 the cost of it, sure, or, you know, we'll 19 liquidate it, leave it in -- don't take those 20 positions, don't take that account. 21 I'm sure it could have been negotiated 22 with the OCC to transfer the customer accounts 23 separate from the proprietary accounts if that 24 was -- if that was everybody's desire. 25 Q. If you could turn -- I'm showing you</p>	<p style="text-align: right;">Page 121</p> <p>1 D. McIsaac 2 what has been marked as Exhibit 687. 3 (Exhibit 687, Trustee's Memorandum in 4 Further Support of His Motion for Relief 5 Pursuant to the Sale Orders or, 6 Alternatively, For Certain Limited Relief 7 under Rule 60(B) and in Opposition to the 8 Motion of Barclays Capital Inc. to Enforce 9 the Sale Orders and Secure Delivery of all 10 Undelivered Assets, marked for 11 identification, as of this date.) 12 Q. If you could turn to page 60. In 13 paragraph 136, the last two sentences, the 14 Trustee says in his brief, "For example, LBI 15 could have agreed to transfer to Barclays the 16 minimum margin assets that the OCC required to 17 secure LBI's liabilities to the OCC for LBI's 18 proprietary positions. Such a transfer arguably 19 would have cost LBI little because, in any 20 event, LBI could not have withdrawn the minimum 21 margin assets required by the OCC to secure 22 LBI's open positions." Do you see that? 23 A. Yes, I do. 24 Q. Do you agree with that statement? 25 A. Can I read the whole two paragraphs?</p>

Page 122	Page 123
<p>1 D. McIsaac</p> <p>2 Q. Uh-huh.</p> <p>3 (Document review.)</p> <p>4 MR. OXFORD: Okay. And Mr. McIsaac,</p> <p>5 you should feel free, of course, not to just</p> <p>6 read those paragraphs, but the whole of the</p> <p>7 section to which Ms. Bloomer directs you.</p> <p>8 (Document review continues.)</p> <p>9 A. Okay. Now, I'm sorry, I've read it</p> <p>10 now, so ...</p> <p>11 Q. Okay. Directing you again to the last</p> <p>12 two sentences of paragraph 136, do you agree</p> <p>13 with the statement that, "LBI could have agreed</p> <p>14 to transfer the minimum margin assets that OCC</p> <p>15 required to secure all of the liabilities to the</p> <p>16 OCC for LBI's proprietary positions"?</p> <p>17 A. In context, it says, for example, they</p> <p>18 could have done it. They have also said that it</p> <p>19 could have been negotiated, so this was just one</p> <p>20 example of things that could have occurred.</p> <p>21 Q. And in the next sentence, it says,</p> <p>22 "Such a transfer arguably would have cost LBI</p> <p>23 little because, in any event, LBI could not have</p> <p>24 withdrawn the minimum margin assets required by</p> <p>25 the OCC to secure LBI's open positions." Do you</p>	<p>1 D. McIsaac</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you agree with that?</p> <p>5 A. In the context here, yes.</p> <p>6 Q. What do you mean in the context here?</p> <p>7 A. There's four paragraphs here</p> <p>8 explaining things they could have been done if</p> <p>9 it was negotiated. All I've said all along is</p> <p>10 this was something that should have been</p> <p>11 negotiated and decided upon by the parties prior</p> <p>12 to consummating the trade of the sale.</p> <p>13 Q. You said that the Trustee would have</p> <p>14 been irrational to agree to transfer the posted</p> <p>15 margin for anything less than dollar for dollar,</p> <p>16 isn't that right?</p> <p>17 A. For the proprietary --</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 Misstates the witness's testimony.</p> <p>20 You can answer.</p> <p>21 A. I was talking about proprietary</p> <p>22 assets. I don't know if this was talking about</p> <p>23 all the proprietary assets. The proprietary</p> <p>24 assets at the OCC, my understanding, were net</p> <p>25 long positions.</p>
Page 124	Page 125
<p>1 D. McIsaac</p> <p>2 Q. This says that the transfer would have</p> <p>3 cost -- would arguably have cost LBI little</p> <p>4 because LBI could not have withdrawn the minimum</p> <p>5 margin assets required by the OCC to secure</p> <p>6 LBI's open positions.</p> <p>7 Could the Trustee have withdrawn the</p> <p>8 minimum margin requirements required by the OCC</p> <p>9 to secure the affiliate positions in the firm</p> <p>10 account?</p> <p>11 A. No, I do not believe so. Because</p> <p>12 they're in the account, they could not withdraw</p> <p>13 any of the minimum margin requirements.</p> <p>14 Q. Could LBI have withdrawn the minimum</p> <p>15 margin assets required by the OCC to secure</p> <p>16 LBI's customer accounts?</p> <p>17 MR. OXFORD: Object to the form. Do</p> <p>18 you have a specific timeframe in mind,</p> <p>19 Trish?</p> <p>20 MS. BLOOMER: No, I don't.</p> <p>21 A. I don't think they could have</p> <p>22 withdrawn any of the minimum margin requirements</p> <p>23 at that point in time.</p> <p>24 Q. For the customer accounts either?</p> <p>25 A. For the customer accounts or the</p>	<p>1 D. McIsaac</p> <p>2 proprietary accounts.</p> <p>3 Q. Outside of the OCC, could LBI have</p> <p>4 withdrawn the minimum margin assets required by</p> <p>5 other clearing organizations or clearing brokers</p> <p>6 to secure LBI's open positions?</p> <p>7 A. When you say "outside the OCC," what</p> <p>8 are you referring to? A little bit -- it's a</p> <p>9 very broad statement outside --</p> <p>10 Q. Sure. I'll give an example. Your</p> <p>11 understanding -- do you understand that LBI had</p> <p>12 a customer account open at the CME at the time</p> <p>13 the transaction closed?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Could LBI have withdrawn the</p> <p>16 minimum margin assets required by the CME to</p> <p>17 secure LBI's customer accounts?</p> <p>18 A. No.</p> <p>19 I'm sorry.</p> <p>20 MR. OXFORD: Sorry. Withdrawn.</p> <p>21 A. No.</p> <p>22 Q. And at any other place where there</p> <p>23 were open customer or proprietary accounts could</p> <p>24 LBI have withdrawn the minimum margin assets</p> <p>25 required to secure those open positions?</p>

Page 126	Page 127
<p>1 D. McIsaac</p> <p>2 A. I don't believe they could have.</p> <p>3 You're making it broad, so I don't want to make</p> <p>4 a general statement, but my understanding, no,</p> <p>5 they could not have. But it didn't mean they</p> <p>6 had to give them away either.</p> <p>7 Q. Okay. The sentence says that "a</p> <p>8 transfer arguably would have cost little because</p> <p>9 LBI could not have withdrawn the minimum margin</p> <p>10 assets required to secure the positions."</p> <p>11 Would you agree that that same</p> <p>12 sentence applies not just to proprietary, but to</p> <p>13 any accounts for which LBI could not withdraw</p> <p>14 the minimum margin assets required?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 You can answer.</p> <p>17 A. I would say the minimum margin</p> <p>18 requirements as it relates to the exposure of</p> <p>19 the positions would be transferred as long as</p> <p>20 they were not -- did not get adequate protection</p> <p>21 elsewhere. So in the second part where they</p> <p>22 talk about the customers' margin positions,</p> <p>23 the -- Barclays in the transfer of the</p> <p>24 customers' accounts I believe had adequate</p> <p>25 protection against the customers fulfilling</p>	<p>1 D. McIsaac</p> <p>2 their obligations. So, transferring those, they</p> <p>3 already got the margin that was provided by the</p> <p>4 customers to support that.</p> <p>5 Q. I'm showing you what has been marked</p> <p>6 as Exhibit 659A. If you could review the e-mail</p> <p>7 and the first attachment to the e-mail.</p> <p>8 Specifically, I would direct your attention to</p> <p>9 the first full paragraph on page 2 of the</p> <p>10 letter.</p> <p>11 (Document review.)</p> <p>12 A. You said the first two paragraphs,</p> <p>13 right?</p> <p>14 Q. I said the first full paragraph.</p> <p>15 A. I'm sorry, I read the first two, okay.</p> <p>16 Q. On page 2.</p> <p>17 A. Oh, on page 2. Okay. Sorry.</p> <p>18 (Document review.)</p> <p>19 A. Yes, okay, I've read those paragraphs</p> <p>20 that start "pursuant to."</p> <p>21 Q. Okay. Now, in this paragraph</p> <p>22 Barclays' counsel is writing to the CFTC about</p> <p>23 the customer accounts that LBI is going to be</p> <p>24 transferring. Do you understand that reference</p> <p>25 in the context of this letter to be referring to</p>
Page 128	Page 129
<p>1 D. McIsaac</p> <p>2 the futures customer accounts?</p> <p>3 A. Yes.</p> <p>4 Q. The second sentence of that paragraph</p> <p>5 says, "Some of these accounts are accounts that</p> <p>6 contain no open commodity positions and accounts</p> <p>7 that are in deficit, within the meaning of</p> <p>8 Regulations 190.06(e)(1)(iv) and (v)," and then</p> <p>9 "17 C.F.R. Section 190.06(e)(1)(iv) and (v),</p> <p>10 respectively." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What do you understand this to mean</p> <p>13 when it says that "some of these accounts are</p> <p>14 accounts that are in deficit"?</p> <p>15 A. That would be accounts that had -- you</p> <p>16 had a receivable from the customer that exceeded</p> <p>17 any assets he had on deposit with you as the</p> <p>18 firm.</p> <p>19 Q. Okay. And you said in the answer to</p> <p>20 the last question that Barclays had adequate</p> <p>21 protection against the customers fulfilling</p> <p>22 their obligations. Were you assuming that the</p> <p>23 customer margin accounts were not in deficit?</p> <p>24 A. Are we talking about in the futures</p> <p>25 sense?</p>	<p>1 D. McIsaac</p> <p>2 Q. Uh-huh.</p> <p>3 A. In the futures sense, even if you're</p> <p>4 in deficit, the firm -- the FCM is required to</p> <p>5 make up that deficit to protect all the</p> <p>6 customers that are not in deficit. So they</p> <p>7 would have to lock up additional collateral.</p> <p>8 They're responsible for all the customers that</p> <p>9 they owe -- they have an obligation to where</p> <p>10 they owe them money or owe them net equity to</p> <p>11 cover them in their lockup. The deficits -- the</p> <p>12 customers or deficits, they would be required to</p> <p>13 top them off in the second secured calculation.</p> <p>14 Q. The customers would be required to --</p> <p>15 A. No, the firm would be required to top</p> <p>16 them off.</p> <p>17 Q. And if the firm was required to top</p> <p>18 off any deficits, is it your understanding that</p> <p>19 that would constitute customer property to which</p> <p>20 Barclays was entitled under the terms of this</p> <p>21 transaction even though it wasn't property</p> <p>22 deposited by any customer?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 A. The way the seg and secured</p> <p>25 calculation works, you have a requirement on the</p>

Page 130	Page 131
<p>1 D. McIsaac 2 top and you have where the assets are on the 3 bottom. The requirement would add back to your 4 requirement that deficit. So you'd be required 5 to lock up all moneys owed to all customers. 6 Q. Including money that the customers had 7 not deposited? 8 A. They would add it back. 9 MR. OXFORD: Object to the form. 10 Q. And when Barclays took over 11 responsibility for these accounts, did it 12 inherit those requirements? 13 MR. OXFORD: I object to the form. 14 A. Yes. 15 Q. And if there were margin deficits in 16 the customer accounts, what protection did 17 Barclays receive in this transaction if it 18 didn't receive any of the LBI assets that were 19 held in those accounts, that were held in the 20 customer's segregated and secured accounts? 21 MR. OXFORD: Object to the form. 22 Misstates his testimony. Assumes facts not 23 in evidence. 24 THE WITNESS: I'm sorry, can I answer 25 or --</p>	<p>1 D. McIsaac 2 MR. OXFORD: Yes. 3 THE WITNESS: I'm sorry. 4 Two things could have happened: They 5 could have decided not to take the customers 6 that were in deficit and had them 7 liquidated, liquidated them on the spot, and 8 they would have been topped up for that 9 potential loss by the firm making sure that 10 they covered the requirement which would 11 have been all the obligations to customers. 12 Q. I'm sorry, can you -- what was the 13 second option? You said two things could have 14 happened. I don't understand your answer. Can 15 you -- 16 A. They could have decided not to take 17 those customers. 18 Q. Okay. 19 A. Or, if they did take them, could have 20 liquidated their positions and closed them out. 21 Q. If there was a margin deficit, were 22 they protected in the event of a liquidation to 23 the full extent of the exposure on the 24 positions? 25 A. They would have --</p>
Page 132	Page 133
<p>1 D. McIsaac 2 MR. OXFORD: Object. Object to the 3 form. 4 A. Sorry. They would have had some 5 minimal exposure from the time that the market 6 closed on one day to the market opened on the 7 next to liquidate the positions. 8 Q. How do you know that the exposure is 9 minimal if you don't know the size of the margin 10 deficit? 11 A. The positions are marked to market 12 every day. You have protected all of the 13 clients who have -- that you owe money to. You 14 have locked up -- all of that money has been 15 locked up. Then you go and you would liquidate 16 those accounts. 17 Whatever the cost is, because it's 18 marked to market every day, you only have that 19 fraction of from the time the market closed to 20 the time the market opened and you were able to 21 liquidate to lose any money on the liquidation. 22 And you could make money on the liquidation. 23 Q. But as the acquiring broker-dealer, 24 isn't it true that you're only, in your opinion, 25 under the structure of this transaction,</p>	<p>1 D. McIsaac 2 entitled to the customer property that was held 3 by LBI to secure those customer positions? 4 A. And that customer property is what it 5 would be locked up as assets pertaining to the 6 customer. That's for the obligations of the 7 customer. So you start out with your net 8 customer balances, you add back any deficits 9 that aren't fully secured, and that's your 10 obligations to your customers. And that's what 11 they would get in a transfer. 12 Q. Okay. So they would get property in a 13 customer's seg and secured account that wasn't 14 necessarily a customer's property; is that 15 right? 16 A. No, it would be the customer's 17 property. The customers gave you \$100. You'll 18 return -- they -- you have to set aside that 19 \$100 for the customers. 20 Q. If the customer account is in a margin 21 deficit, does that mean you have a receivable as 22 opposed to actual cash in that account? 23 A. Yes. And but for the customers that 24 you owe moneys to, you have to lock up all of 25 that money. So if a customer gives you \$100 and</p>

Page 134	Page 135
<p>1 D. McIsaac 2 another customer is in deficit for \$50, you have 3 to lock up \$100. So you would be transferring 4 all the assets that belong to the customers. 5 You would then liquidate -- you would 6 also transfer whatever assets the customer's in 7 deficit because he may have securities -- he may 8 have a receivable of \$20 and secured for \$10. 9 You would have some security against it, but 10 your exposure is only between the time of 11 liquidation, from the close of the market to the 12 open of the market to liquidate that account. 13 Q. And that size of that exposure would 14 depend on the quantity and size of the customer 15 positions as well as the market volatility; is 16 that right? 17 A. It would depend on a lot of things. 18 It also may be a very good receivable because 19 maybe the customer went in deficit for a market 20 move and he'll make -- he'll meet his call 21 tomorrow morning. 22 Q. If the customer positions were to, on 23 net, drop in value between the day of the 24 closing and the following day, is it fair to say 25 that Barclays was exposed to the full risk of</p>	<p>1 D. McIsaac 2 the amount of drop in value and did not receive 3 protection against that risk from the customer 4 property that it received? 5 MR. OXFORD: Object to the form. 6 Assumes facts not in evidence. 7 A. Are we talking about just the customer 8 who's in deficit or are we talking about the 9 whole customer? 10 Q. Any customer. 11 A. No, there would be no difference for 12 the other customers because you have market 13 movement and you make market calls. Customers 14 are required to meet their margin calls every 15 day. Usually, a firm will have excess margin 16 there to cover themselves. If they lose money, 17 they bring in money and you -- you use that 18 money to pay the exchanges. 19 Q. And that assumes that the customers 20 are creditworthy and pay their margin calls; is 21 that right? 22 A. That assumes that the customers meet 23 their margins calls. If they don't meet their 24 margin call, you liquidate them. 25 Q. Would you agree that credit risk is</p>
Page 136	Page 137
<p>1 D. McIsaac 2 more substantial in a volatile market? 3 MR. OXFORD: Object to the form. 4 A. I think credit risk is dependent on 5 who your counterparties are. I believe, from 6 what I saw in the due diligence done by the 7 Barclays people, that it was mainly 8 institutional customers that were in their 9 futures business. Based on that, I would tend 10 to think that they would be viable 11 counterparties to meet their obligations. 12 Q. Is credit risk greater in a recession 13 than it is in a -- under stable market 14 conditions? 15 MR. OXFORD: Object to the form. 16 A. The credit risk is dependent on the 17 customer and the positions they have. They 18 could be betting that the market goes down and 19 making a ton of money. 20 So I don't know what the positions 21 that the customers had, in what markets they 22 were trading, and what effect that was happening 23 at September 19 that would have affected 24 individual customers' positions, you know, so 25 there was I don't believe a recession on</p>	<p>1 D. McIsaac 2 September 19, but I don't know. 3 Q. Do you -- did you base your opinion on 4 the understanding that there was not a recession 5 as of September 19, 2008? 6 A. It doesn't matter to me if there was 7 or wasn't or if we were or were not in a 8 recession. People pay their bills when they're 9 in a recession and when there's not a recession. 10 These are not individual customers, primarily. 11 These are institutions, from what I've 12 understood. 13 Q. So it has no bearing on your opinion 14 that the country was in a recession -- if the 15 country were in fact in a recession at the time 16 this transaction was negotiated? 17 A. It would matter what the customers had 18 and the positions they had and who the customers 19 were. 20 Q. Would it matter at all to your 21 opinion, at all to your opinion, whether or not 22 there was a recession at the time that this deal 23 was negotiated in terms of assessing the risks 24 associated with the transaction? 25 A. You assess the risk of the customers</p>

Page 138	Page 139
<p>1 D. McIsaac 2 and the market environment at that point in time 3 and the customer's position. I don't know if a 4 recession has anything to do with the viability 5 of a futures customer paying their margin 6 requirements. 7 Q. You just said you assess the risk of 8 the customers and the market environment at that 9 point in time. Are you agreeing that the market 10 environment at that point in time is relevant to 11 an assessment of the risks associated with a 12 transaction of the type that Barclays 13 consummated with Lehman Brothers in September of 14 2008? 15 MR. OXFORD: Object to the form. 16 A. The market environment in relation to 17 the positions that the customers had on. If the 18 market's going down and the customers were 19 betting that the market is going to go down, 20 they're not a credit risk. So you have to 21 analyze the customers, the types of positions 22 they are, their familiarity with the market, and 23 your belief on where the market goes and whether 24 or not you have adequate collateral. 25 Q. Okay. I'm going to try to ask the</p>	<p>1 D. McIsaac 2 question one more time, and if you could just 3 answer the question that I'm asking. 4 Would it matter at all to your opinion 5 whether or not there was a recession at the time 6 that this deal was negotiated in terms of 7 assessing the risks associated with the 8 transaction? Would that matter to your opinion? 9 MR. OXFORD: Object to the form. It's 10 been asked and answered a number of times. 11 You can answer it again. 12 A. I would not care if there was a 13 recession in analyzing individual customer's 14 ability to meet their obligations. 15 Q. Thank you. 16 MR. OXFORD: Trish, if you can let me 17 know when you think it's a good time to 18 break for lunch? It's 1. 19 MS. BLOOMER: Just like five more 20 minutes, if that's okay with everyone. 21 MR. OXFORD: If it's okay with Mr. 22 McIsaac, it's okay with me. 23 MS. BLOOMER: Okay. Thanks. 24 Q. Could you turn back in your expert 25 report to page -- oh, I'm sorry. Could you turn</p>
Page 140	Page 141
<p>1 D. McIsaac 2 in the Trustee's brief, which was Exhibit -- 3 MR. OXFORD: 687. 4 Q. 687. 5 MS. BLOOMER: Thanks, Neil. 6 Q. To page 60. 7 A. Page 60. 8 Q. We were talking earlier about the 9 sentence in the Trustee's brief in which they 10 say that a transfer to Barclays of the minimum 11 margin assets required by the OCC to secure 12 LBI's open positions would arguably have cost 13 LBI little. Do you recall earlier discussing 14 that? 15 A. Yes. 16 Q. Are you aware that the margin 17 requirements at the OCC were shifting by \$500 18 million a day during the week of September 15 on 19 multiple days? 20 MR. OXFORD: Objection to form. 21 Misstates -- 22 A. I believe -- 23 MR. OXFORD: -- the record. 24 A. Sorry. 25 I believe you showed me a document</p>	<p>1 D. McIsaac 2 that showed it going up and then drastically 3 down on the 19th. 4 Q. Perhaps we can look at that document. 5 I believe it was the declaration of Craig Jones. 6 A. Right, Exhibit 1. 7 Q. In Exhibit 1. 8 Do you recall that between the 15th 9 and the 16th the margin requirement went up by 10 over \$500 million, do you see that? 11 A. Yes, I do. 12 Q. And then between the 17th and 18th -- 13 well, between the 16th and the 17th it went up 14 another 45 million or so dollars, do you see 15 that? 16 A. Uh-huh. Yes. 17 Q. And then it goes up over \$600 million 18 between the 17th and the 18th? 19 A. Yes. 20 Q. So between the 15th and the 18th, you 21 see that the margin requirement increased by 22 over \$1.2 billion? 23 A. Yes, I see that. 24 Q. Okay. And then it dropped by 25 approximately \$400 million on that last day of</p>

Page 142	Page 143
<p>1 D. McIsaac 2 the week, do you see that? 3 A. Yes. 4 Q. Would it have been rational for the 5 Trustee, assuming he was aware of the swings in 6 the margin requirements, to believe that it 7 would have arguably cost LBI little to transfer 8 even more than the minimum margin assets given 9 the risk that those margin requirements could 10 increase dramatically over the following day 11 after the transaction? 12 MR. OXFORD: Object to the form. 13 Assumes facts not in evidence. 14 A. I believe you would have to assess 15 what your exposure was there, assess whether or 16 not the margin requirements might have been 17 inflated by the OCC for whatever reason, and 18 determine what your potential risk or what you 19 think the risk is and negotiate from there. 20 Q. Regardless of whether the OCC's margin 21 requirements were inflated or what the reason 22 for them was, you agree that LBI couldn't 23 withdraw anything beyond -- anything that would 24 bring the posted margin below the minimum margin 25 assets required, right?</p>	<p>1 D. McIsaac 2 A. Correct. 3 Q. And you see that the margin 4 requirements increased by \$1.2 billion in a 5 matter of four days during the week of September 6 15, correct? 7 A. I see that they increased and then 8 decreased. 9 Q. Would it be rational for a seller, in 10 light of these margin requirement movements, 11 during the week of September 15, 2008, to 12 believe that there was a risk that the margin 13 requirements would increase again substantially 14 on September 22 and September 23? 15 MR. OXFORD: Object to the form. 16 Assumes facts not in evidence. 17 A. In light of triple-witching day, I 18 don't know if -- if LBI was putting on 19 additional positions during the week or the 20 positions that would close out on Friday would 21 have -- what impact they would have on the 22 margin requirement. 23 I can't answer a question of where I 24 think the margin requirement is going to go 25 without having any idea what the positions were</p>
Page 144	Page 145
<p>1 D. McIsaac 2 and how they had them already covered. Maybe 3 the margin requirement was on shorts that we had 4 long positions already sitting in the account 5 and they would have been covered. 6 Q. Do you know how many positions were in 7 the proprietary accounts at the OCC? 8 MR. OXFORD: Object to the form. Do 9 you have a particular day? 10 MS. BLOOMER: On the 19th of 11 September. 12 A. I believe there were tens of thousands 13 of positions in there that date that included 14 the affiliates, subordinated affiliates 15 accounts. 16 Q. So if a Trustee were to want to 17 assess -- or, if LBI, I apologize, were to want 18 to assess the impact that the expiration weekend 19 would have on the margin requirements, how long 20 would it take the LBI -- LBI to conduct that 21 analysis? 22 MR. OXFORD: Object to the form. 23 A. I would assume LBI, if their systems 24 were like any other systems on the street, would 25 have been able to analyze that fairly quickly.</p>	<p>1 D. McIsaac 2 They -- they have risk systems that would 3 quantify this and they would know what their 4 exposure was as of close of business. 5 MS. BLOOMER: I think this is probably 6 a good time to take our break for lunch. 7 MR. OXFORD: Okay. Thanks. 8 THE VIDEOGRAPHER: The time is 1:05. 9 This is the tape labeled number 3. We're 10 going off the record. 11 (Luncheon recess.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

Page 146	Page 147
<p>1 D. McIsaac 2 AFTERNOON SESSION 3 DANIEL McISAAC, resumed and 4 testified further as follows: 5 THE VIDEOGRAPHER: This is the start 6 of tape labeled number 4. The time is 2:05. 7 We're back on the record. 8 EXAMINATION BY (Cont'd.) 9 MS. BLOOMER: 10 Q. Good afternoon. 11 A. Good afternoon. 12 Q. I'm showing you a document that's been 13 marked as Exhibit 648. This is a declaration 14 that was submitted by Eric Clark. Are you 15 familiar with this declaration? 16 A. I believe I've seen it, yes. 17 Q. And did you see it preparing for your 18 deposition today? 19 A. I think I might have seen it, but I 20 don't recall if it was in preparing or not. But 21 I know I've seen the declaration. 22 Q. Do you believe you saw it -- do you 23 believe you saw it prior to when you submitted 24 your expert report? 25 A. Yes.</p>	<p>1 D. McIsaac 2 Q. On exchange-traded derivatives issues? 3 A. Yes. 4 Q. Yes? 5 A. Yes. 6 Q. If you could turn to the second page, 7 paragraph 6, and review that and let me know 8 when you've had a chance to look at it. 9 (Document review.) 10 A. Yes. 11 Q. Okay. In this paragraph, Mr. Clark 12 says that the OCC options were not immediately 13 brought onto Barclays' systems, as the systems 14 were not capable of incorporating the LBI OCC 15 options. Do you see that? 16 A. Yes. 17 Q. Do you have any reason to doubt the 18 accuracy of that statement? 19 A. No, I do not. 20 Q. In the next sentence he says, "The 21 delay in moving the options on the Barclays' 22 systems created difficulties for Barclays' Risk 23 Management Team in terms of their ability to 24 manage the risk associated with these positions 25 effectively during the interim period."</p>
Page 148	Page 149
<p>1 D. McIsaac 2 Do you see that? 3 A. Yes. 4 Q. Do you have any reason to doubt the 5 accuracy of that statement? 6 A. No, I do not. 7 Q. Have you seen anything in the record 8 that suggests that Barclays did have the ability 9 to manage the risk associated with these 10 positions prior to the time it was able to 11 incorporate them onto its system? 12 MR. OXFORD: Object to the form. 13 A. I believe I did see something where 14 they were trying to risk-manage the positions 15 for a period of time and then turned them back 16 to the Lehman traders to manage the risk. 17 Q. Okay. And do you believe that what 18 you saw led you to conclude that that risk 19 management during that period of time was 20 effective? 21 MR. OXFORD: Object to the form. 22 A. I don't know if I saw enough within 23 that to determine if it was totally effective. 24 Q. What would you consider to be an 25 effective hedge program in terms of the</p>	<p>1 D. McIsaac 2 relationship between losses on underlying 3 positions, for example, and gains onto hedge 4 positions? 5 MR. OXFORD: Object to the form. 6 A. I would assume, having them roll up 7 into a system, that you would be able to monitor 8 both sides of the positions, be able to monitor 9 the options as well as the equity into one 10 straight -- one flow-through system, for lack of 11 better words. 12 Q. If Barclays were attempting to hedge a 13 set of options positions, and those options 14 positions lost \$500 million in value over a 15 discrete period of time, would you consider an 16 effective hedge if the hedge positions that 17 Barclays placed only gained \$150 million during 18 that same time? 19 A. I don't know if their objective was to 20 fully hedge the position. Most trading books do 21 not fully hedge because then there would be no 22 gain or loss unless you were just trying to play 23 the -- the gain or loss when you put on the 24 contract. So most traders don't fully hedge 25 their positions.</p>

Page 150	Page 151
<p>1 D. McIsaac 2 But I don't know if that was 3 effective. Their goal might have been to only 4 hedge a portion of it. 5 Q. Assuming their goal was to fully hedge 6 the position, would you agree that a hedge that 7 only gained \$150 million against underlying that 8 lost \$500 million was an ineffective hedge? 9 MR. OXFORD: Object to the form. 10 Assumes facts not in evidence. 11 A. If you were trying to hedge the entire 12 portfolio and you put on hedges that didn't 13 replicate it, that would have been an 14 ineffective hedge. 15 Q. If you would turn in your report to 16 page 3 -- I'm sorry, page 4, sub-bullet 3 at the 17 top of the page. It says there that, "Any 18 ongoing market risk associated with the 19 proprietary exchange-traded derivatives that 20 Barclays acquired could be and was mitigated by 21 Barclays by hedging these positions." Do you 22 see that? 23 A. Yes. 24 Q. And then if you turn to page 7, 25 paragraph 22, you say, "I would assume that the</p>	<p>1 D. McIsaac 2 purchaser would have anticipated that the short 3 exchange-traded derivatives positions would be 4 hedged by certain long equity positions in LBI's 5 total portfolio." Do you see that? 6 A. Yes. 7 Q. Are you familiar with the various 8 trading strategies that a broker-dealer could 9 undertake for a proprietary portfolio? 10 MR. OXFORD: Object to the form. 11 A. Somewhat, yes, sure. 12 Q. Are long equity positions the only 13 positions that would interact with 14 exchange-traded derivatives positions in terms 15 of the full portfolio? 16 MR. OXFORD: I'll object to the form 17 of the question. 18 A. Yes, I'm not sure really what the 19 question is. I'm not sure what you're -- 20 Q. Is it possible that short 21 exchange-traded derivatives positions would be 22 hedged by anything other than long equity 23 positions in a broker-dealer's portfolio? 24 A. Yes. 25 Q. Can you give me an example?</p>
Page 152	Page 153
<p>1 D. McIsaac 2 A. A short put might be hedged by a short 3 position in a portfolio. A short option could 4 be hedged by a long option. An index could 5 hedge a portfolio of a basket of other options. 6 Q. And could over-the-counter positions 7 also be used to hedge exchange-traded 8 derivatives positions? 9 A. I would tend to think normal course 10 would be to use exchange-traded derivatives to 11 hedge over-the-counter derivatives. 12 Q. Okay. And if you were to have 13 purchased an exchange-traded derivatives 14 position in order to hedge an over-the-counter 15 position, would the acquirer of the 16 exchange-traded derivatives position be 17 considered to have a naked position in the event 18 it didn't also acquire the corresponding 19 over-the-counter derivative? 20 MR. OXFORD: Object to the form. 21 A. I think if the question you're asking 22 is if there was an over-the -- exchange-traded 23 option hedging an over-the-counter position, 24 that if you didn't assume the over-the-counter 25 position, would that single exchange-traded</p>	<p>1 D. McIsaac 2 option be naked? Unless you had something else 3 in your portfolio that was hedging it or could 4 be considered a hedge to it, yes. 5 Q. Is it your understanding that Barclays 6 was acquiring the over-the-counter derivatives 7 of LBI in the September 2008 transaction? 8 A. I do not believe they were. 9 Q. Is it fair to say, then, that Barclays 10 would have been reasonable in assuming that 11 there may be unhedged exchange-traded 12 derivatives positions in the portfolio it was 13 acquiring? 14 MR. OXFORD: Object to the form of the 15 question. Assumes facts not in evidence. 16 A. I don't know if there were 17 over-the-counter derivatives in the -- in LBI's 18 portfolio, nor do I know if they hedged them 19 with exchange-traded derivatives. The -- 20 Q. Is it possible that they did? 21 MR. OXFORD: Object to the form. 22 A. Yes, it's possible that could have 23 happened. 24 Q. And if that was the case, would that 25 position then not be fully hedged if you were</p>

Page 154	Page 155
<p>1 D. McIsaac 2 taking the exchange-traded portfolio and not the 3 over-the-counter portfolio? 4 MR. OXFORD: Object to the form. 5 Asked and answered. 6 You can answer again. 7 A. Unless there was another security or 8 another transaction out there that that was 9 hedging. 10 Q. Okay. My question assumes that the 11 position is hedging the over-the-counter 12 position. Do you understand? 13 A. Yes, but there could be another 14 position that that would also act as a hedge 15 for. 16 Q. Do you -- does a broker-dealer 17 typically put duplicative hedges on its 18 portfolio? 19 A. No. What I meant is they could be 20 hedging this transaction. You take that 21 transaction off, it may be now a hedge for a 22 different security out there. All I'm saying 23 is, in the realm things, it could be hedging 24 another exposure. 25 Q. Is it fair to say that you wouldn't</p>	<p>1 D. McIsaac 2 assume as an acquirer that you were getting a 3 fully hedged portfolio if you were taking 4 exchange-traded derivatives and not 5 over-the-counter derivatives? 6 MR. OXFORD: Object to the form. That 7 assumes facts not in evidence. 8 A. I wouldn't assume anything. I would 9 inquire as to what I was purchasing and what the 10 various books were, and if I had exchange-traded 11 derivatives hedging an, you know, an 12 over-the-counter derivative book, I would assume 13 I'd find that out before I decided to buy the 14 unhedged exchange-traded derivatives. 15 Q. Okay. When you're -- if you were 16 considering an acquisition of tens of thousands 17 of exchange-traded derivatives positions, how 18 would you go about determining whether or not 19 those positions were hedged in full or in part 20 by over-the-counter derivatives or vice-versa? 21 A. I guess I'd ask the people who were 22 managing the over-the-counter derivative book if 23 they had exchange-traded derivatives in their 24 portfolio. 25 Q. And if the answer was yes, what would</p>
Page 156	Page 157
<p>1 D. McIsaac 2 you do in order to determine the extent of the 3 naked exposure on those exchange-traded 4 derivatives in the event you weren't acquiring 5 the over-the-counter derivatives? 6 MR. OXFORD: Object to the form. 7 Assumes facts not in evidence. 8 You can answer. 9 A. I would ask them what their portfolio 10 of exchange-traded derivatives was that was 11 hedging it, specific portfolio. 12 Q. And would that require you to obtain 13 information not only about the positions that 14 were open in an exchange-traded derivatives 15 account, but also the relationship between those 16 positions and any over-the-counter positions? 17 A. No, I would just ask for a list of the 18 exchange-traded derivatives in his trading 19 portfolio book. 20 Q. And what would you do with that list? 21 A. I would, I guess, determine if I want 22 to buy those assets without the 23 over-the-counters positions that they may or may 24 not be hedging. 25 Q. Would you also try to determine at the</p>	<p>1 D. McIsaac 2 same time whether there were equities positions 3 that were hedging those positions? 4 MR. OXFORD: Object to the form. 5 Which positions are you talking about? 6 Q. The exchange-traded derivatives 7 positions that you were -- would be acquiring? 8 MR. OXFORD: Okay. Same objection. 9 You can answer. 10 A. I thought we started this by saying if 11 we had exchange-traded derivatives hedging an 12 over-the-counter book, well, how would I 13 determine that? And I think I said I would talk 14 to the people managing that book. I would 15 assume, and maybe that's a bad thing, I would 16 probably ask them also what other positions do 17 they have that's exchange-traded that is in the 18 portfolio that I might be acquiring. 19 Q. Okay. And you would want to analyze 20 the relationships between the exchange-traded 21 derivatives, the over-the-counter derivatives, 22 and the other long and short positions in the 23 portfolio that you were acquiring in order to 24 understand the relationships between the various 25 trades, is that fair?</p>

Page 158

Page 159

1 D. McIsaac
2 MR. OXFORD: Object to the form.
3 A. If I was not obtaining the
4 over-the-counter derivatives and had no reason
5 to know about them, I would try to assess the
6 exchange-traded derivatives and the equity
7 positions on the risk that it was -- that it
8 would give me perhaps to take over those
9 positions. I don't care what they did with the
10 over-the-counter if I'm not assuming that.
11 Q. Do you care what they did with the
12 over-the-counter if the over-the-counter
13 derivatives were related to the exchange-traded
14 derivatives or the fixed equity positions that
15 you were acquiring in terms of a hedge
16 relationship?
17 MR. OXFORD: Object to the form.
18 A. Again, if I'm not acquiring the
19 over-the-counter, why would I care their
20 relationship to the exchange-traded that I was
21 acquiring? I wouldn't care if it was a good
22 hedge or not because I wasn't acquiring the
23 over-the-counter.
24 Unless you're saying that I, in the
25 realm of possibility, I may decide to take over

1 D. McIsaac
2 the over-the-counter positions.
3 Q. Would you care if it was naked hedge
4 that you were acquiring, a naked position -- I'm
5 sorry.
6 Would you care if it was a naked
7 position that you were acquiring because you
8 weren't getting the over-the-counter position?
9 MR. OXFORD: Object to the form.
10 A. I would analyze that just as any other
11 position I was acquiring I would analyze.
12 Q. You say on the top of page 8 in your
13 expert report that, "Mr. Leitner appears to
14 assume that Barclays was, at least at the start
15 of the week, purchasing a book of business that
16 was at least partly hedged."
17 Is it your understanding that Barclays
18 was acquiring a book of business that was partly
19 hedged or that was fully hedged as of the
20 beginning of the week?
21 A. I don't know if I have an
22 understanding one way or the other. I don't
23 think anybody's business would be fully hedged,
24 because if you're fully hedged, then you don't
25 make money. So you would determine what hedges

Page 160

Page 161

1 D. McIsaac
2 you wanted based on the risk that you wanted in
3 that book and where you thought your rewards
4 were. You wouldn't, for every long position,
5 have a corresponding short because then you
6 wouldn't make any money.
7 Q. Would you be qualified to do that
8 assessment yourself if you were advising on a
9 transaction of the type that Lehman and Barclays
10 entered into in September of 2008?
11 MR. OXFORD: Object to the form. I'm
12 not sure it's clear what assessment you're
13 asking about.
14 MS. BLOOMER: He can ask me to clarify
15 if he needs me to clarify, Neil.
16 A. I don't know, when you say "assess,"
17 what you mean by it.
18 Q. You said you wouldn't for every long
19 position have a corresponding short because you
20 wouldn't make any money. You said you would
21 determine what hedges you wanted based on the
22 risk that you wanted in that book and where you
23 thought your rewards were.
24 Were you qualified -- are you
25 qualified, do you consider yourself qualified to

1 D. McIsaac
2 make those types of assessments in the
3 connection with a transaction of this type?
4 MR. OXFORD: Objection to the form.
5 A. What I was referring there is the
6 trader who's trading that book would make that
7 assessment. Firms have various people that
8 monitor what the traders are doing and there are
9 different risk managers that look at different
10 risk.
11 If you're asking me if I was long IBM
12 and short a call on AT&T, could I assess the
13 total risk on that, I would know that I have
14 exposure on two sides and I'm not hedged. Could
15 I tell you how much I could lose on each? No,
16 but firms will have systems that do that.
17 Lehman certainly had a system that did
18 that because they were on -- they were a CSE
19 firm so they certainly had value at risk and
20 they did -- they did analysis of what their
21 gains and losses were, and I'm -- what their
22 gains and losses could be based on the value at
23 risk, and I'm assuming that they had the
24 wherewithal to determine that.
25 Q. Do you have knowledge of how the

Page 162	Page 163
<p>1 D. McIsaac 2 process of assessing this risk and determining 3 what positions you are taking over would consist 4 of? 5 MR. OXFORD: Object to the form. 6 A. Again, you normally have a 7 businessperson determine what risk appetite he 8 had for his business and determine if the book 9 of business that they were selling he wished to 10 buy and it fit into his risk model. 11 Q. Do you know how long it would take 12 that person to do an analysis of the risk 13 profile of a portfolio of exchange-traded 14 derivatives and equities positions the size that 15 Barclays was acquiring in September of 2008? 16 A. I do not know how long it would take, 17 but I would assume that the systems already in 18 place at LBI would have spit that information 19 out. 20 Q. You think that you could hit a button 21 and print that information out; is that your 22 testimony? 23 MR. OXFORD: Object to the form. 24 Mischaracterizes the witness's testimony. 25 You can answer.</p>	<p>1 D. McIsaac 2 A. I believe Lehman had systems that 3 provided them with value at risk on a daily 4 basis. 5 Q. And do those systems that provide 6 value at risk on a daily basis tell you which 7 positions are hedging which positions so that if 8 you're not taking all of the positions, you know 9 what's at risk? 10 MR. OXFORD: Objection to the form. 11 A. I don't believe it will earmark every 12 naked position that's in the portfolio. It will 13 tell you the portfolio and what the anticipated 14 market movement could be in that portfolio. 15 Q. And if there are multiple portfolios, 16 and you're not taking all of them, would you 17 agree that it's not as simple as pressing a 18 button in order to determine the risk profile of 19 the portfolio that you're taking over? 20 MR. OXFORD: Object to the form. 21 Mischaracterizes the witness's testimony. 22 MS. BLOOMER: I'm asking him a 23 question. I'm not characterizing anything. 24 A. I would believe that the systems would 25 enable the management of Lehman to assess the</p>
Page 164	Page 165
<p>1 D. McIsaac 2 risk at various levels, possibly down to the 3 individual trader, but at a minimum probably 4 down to the individual desk. 5 Q. Was it -- maybe I misunderstood your 6 testimony. Was it your testimony that the 7 systems wouldn't have information other than the 8 aggregate risk of a particular portfolio? So, 9 in other words, wasn't it your testimony that 10 the system wouldn't generate information that 11 would tell you which positions are hedged by 12 which other positions? 13 A. I believe what I said, and if I said 14 that, it's not what I meant to say, the system 15 would analyze your risk on a portfolio basis. 16 It may not at a top level spit out this position 17 is not hedged. In the makeup of the risk 18 matrix, it would give you information that you 19 need to see. 20 Q. What do you mean when you say "on a 21 portfolio basis"? 22 A. Well, on a trader level, on a desk 23 level, whatever the firm prescribes to be a 24 portfolio. 25 Q. And could any one portfolio include</p>	<p>1 D. McIsaac 2 both exchange-traded positions and 3 over-the-counter positions? 4 A. Sure. 5 Q. And if the system were to spit out a 6 report that showed the risk profile of a 7 portfolio that contained both exchange-traded 8 and over-the-counter derivatives, would that 9 report tell you which of those positions were 10 going to be naked in the event that the 11 over-the-counter derivatives were not to be 12 transferred with the exchange-traded positions? 13 A. There would probably be reports in the 14 system that would indicate all the individual 15 securities that are in that system. It may not 16 assess them separately as to the risk of that 17 one position that's hedged because it may be 18 looking to hedge on the total desk position, but 19 you would have the analysis of what was owned 20 and what the exposure was on that security. 21 Q. Do you know that or you -- you said 22 "probably." I would like to confirm. Do you 23 know that or not? 24 A. I would assume most risk systems would 25 have that information. I did not look at</p>

Page 166	Page 167
<p>1 D. McIsaac</p> <p>2 Lehman's system and I can't determine whether or</p> <p>3 not they did, but I'm assuming that during the</p> <p>4 due diligence somebody would have looked at</p> <p>5 that.</p> <p>6 Q. During what due diligence?</p> <p>7 A. Barclays' due diligence.</p> <p>8 Q. And how long did Barclays have to do</p> <p>9 that due diligence?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 Asked and answered.</p> <p>12 You can answer again.</p> <p>13 A. I don't know how long Barclays had to</p> <p>14 do the due diligence. I assume they had enough</p> <p>15 time to do it or else they would not have</p> <p>16 entered into the transaction.</p> <p>17 Somebody, I'm assuming, made an</p> <p>18 assessment of the risk of what they were buying</p> <p>19 and determining whether or not it fit into what</p> <p>20 they were looking for and they could afford to</p> <p>21 take on that risk.</p> <p>22 Q. Could it be that they agreed to take</p> <p>23 on the risk because they believed they were</p> <p>24 getting protection of the posted margin at the</p> <p>25 clearing corporations, is that possible?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. I can't go into what they thought they</p> <p>4 were getting and weren't getting. I cannot tell</p> <p>5 you what is in their mind and what they were</p> <p>6 getting and what they weren't getting.</p> <p>7 Q. Is it possible that the reason they</p> <p>8 agreed to take on these positions was not</p> <p>9 necessarily because they had the time to do all</p> <p>10 of the due diligence, but because they believed</p> <p>11 they were getting posted margin as protection</p> <p>12 against some portion of those risks?</p> <p>13 MR. OXFORD: Objection to the form.</p> <p>14 Q. Is that possible?</p> <p>15 A. Which positions? We've talked about</p> <p>16 the portfolio. We've talked about cash</p> <p>17 positions and exchange-traded derivatives.</p> <p>18 What positions are we looking for</p> <p>19 margin to protect?</p> <p>20 Q. Is it possible that Barclays agreed to</p> <p>21 take over Lehman's exchange-traded derivatives</p> <p>22 portfolio because it believed that it was</p> <p>23 getting the margin that was posted to secure</p> <p>24 those positions as protection against any risk</p> <p>25 that may exist due to the fact that those</p>
Page 168	Page 169
<p>1 D. McIsaac</p> <p>2 positions may or may not be naked exposures?</p> <p>3 MR. OXFORD: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. I don't know if I could assess what</p> <p>6 was in their mind on negotiating the deal and</p> <p>7 what they thought they were getting and weren't</p> <p>8 getting.</p> <p>9 Q. I'm asking you if it's possible that</p> <p>10 that's the reason that they agreed to go forward</p> <p>11 with the transaction --</p> <p>12 A. It is possible --</p> <p>13 Q. -- despite having not done the due</p> <p>14 diligence that they requested.</p> <p>15 A. It is possible that that was in their</p> <p>16 mind and they thought of that, yes.</p> <p>17 Q. Okay. In your review of the evidence</p> <p>18 in this case, did you see any indication that</p> <p>19 Barclays was arranging to post margin to the OCC</p> <p>20 or the various other clearing brokers and</p> <p>21 clearing organizations such that the margin</p> <p>22 requirements come Monday, September 22, would be</p> <p>23 satisfied in order to avoid a liquidation?</p> <p>24 A. I didn't see anything to the effect</p> <p>25 that they were preparing to do that, but I</p>	<p>1 D. McIsaac</p> <p>2 haven't reviewed all the documents that Barclays</p> <p>3 has in their possession as to the transaction.</p> <p>4 Q. If you were advising a company who was</p> <p>5 acquiring an exchange-traded derivatives</p> <p>6 portfolio, and you knew the closing was going to</p> <p>7 take place in a matter of days, would you be</p> <p>8 advising that company to start making</p> <p>9 arrangements to post the collateral if you</p> <p>10 didn't believe you were getting the collateral</p> <p>11 that had already been posted by the selling</p> <p>12 entity?</p> <p>13 A. Where would I advise them to post the</p> <p>14 collateral if they didn't buy anything as yet?</p> <p>15 I'm not sure what the question is. How would I</p> <p>16 advise them to post collateral? Post collateral</p> <p>17 where?</p> <p>18 Q. To arrange. Would you advise them to</p> <p>19 start arranging to post that collateral if you</p> <p>20 believed you weren't going to be getting the</p> <p>21 collateral that was already posted by the</p> <p>22 selling entity?</p> <p>23 A. How much time would I -- I don't think</p> <p>24 they would need a lot of time to arrange for</p> <p>25 collateral to post if they were a broker-dealer.</p>

<p style="text-align: right;">Page 170</p> <p>1 D. McIsaac</p> <p>2 They had plenty of collateral that could have</p> <p>3 been posted if they needed to.</p> <p>4 Q. Are you aware of how many different</p> <p>5 clearing organizations and clearing brokers LBI</p> <p>6 traded in exchange-traded derivatives through?</p> <p>7 A. I believe they traded through the OCC,</p> <p>8 the CME in the U.S. I believe they cleared</p> <p>9 through other brokers for some of the other</p> <p>10 foreign businesses. I don't know what</p> <p>11 arrangements Barclays had with those entities</p> <p>12 already.</p> <p>13 Q. What is the typical practice of a</p> <p>14 clearing organization at the open of business on</p> <p>15 a given day if collateral is not posted</p> <p>16 sufficient to satisfy the margin requirements?</p> <p>17 MR. OXFORD: Objection. Form.</p> <p>18 A. I'm not sure what the question --</p> <p>19 could you sort of rephrase it so I understand</p> <p>20 what the question is?</p> <p>21 Q. Sure. If the OCC woke up on Monday</p> <p>22 morning and realized that there was no</p> <p>23 collateral posted in the OCC accounts that were</p> <p>24 held on behalf of LBI, what would the OCC have</p> <p>25 done?</p>	<p style="text-align: right;">Page 171</p> <p>1 D. McIsaac</p> <p>2 A. Well, I don't know how that could</p> <p>3 happen because I don't know how the collateral</p> <p>4 could come out. So I assume when they were</p> <p>5 taking over the positions, however they decided</p> <p>6 to move those positions into their</p> <p>7 infrastructure into their position, that they</p> <p>8 would make arrangements with the OCC to have the</p> <p>9 adequate collateral there.</p> <p>10 Sometimes you may transfer the</p> <p>11 collateral that's in the accounts already and</p> <p>12 then pay it back to the -- to the seller just as</p> <p>13 a means to do it efficiently.</p> <p>14 Q. And if you were advising an entity, a</p> <p>15 seller, to enter into that type of an</p> <p>16 arrangement, would you have something written</p> <p>17 into an agreement somewhere to provide for a</p> <p>18 true-up of that money?</p> <p>19 A. I would have something that explained</p> <p>20 what I was purchasing, and if I wasn't</p> <p>21 purchasing those assets, I might have something</p> <p>22 in there saying I'll return them or else. If</p> <p>23 I'm not paying for them, I'd be obliged to</p> <p>24 return them. I've done a deal before, we have</p> <p>25 moved those assets over and then paid them back</p>
<p style="text-align: right;">Page 172</p> <p>1 D. McIsaac</p> <p>2 the next day. It was just the ease of moving it</p> <p>3 into the -- into the process of moving the</p> <p>4 exchange-traded derivatives over.</p> <p>5 Q. Would it be prudent as an advisor to a</p> <p>6 seller in that circumstance to have a</p> <p>7 documentation of the agreement that you would be</p> <p>8 getting back billions of dollars in collateral?</p> <p>9 MR. OXFORD: Objection to the form.</p> <p>10 Assumes facts not in evidence.</p> <p>11 You can answer.</p> <p>12 A. I would assume that as well as what</p> <p>13 you were purchasing would be in the agreement.</p> <p>14 Q. I'm showing you what has been marked</p> <p>15 as Exhibit 51. Oh, you already have a document</p> <p>16 that's Exhibit 51.</p> <p>17 If you look at paragraph 1(a), it says</p> <p>18 here, "For good and valuable consideration, the</p> <p>19 receipt and sufficiency of which are hereby</p> <p>20 acknowledged, Lehman hereby sells, assigns,</p> <p>21 transfers and sets over to Barclays, without</p> <p>22 recourse or without representation or warranty,</p> <p>23 all of Lehman's rights, title, interests,</p> <p>24 powers, privileges, remedies, obligations, and</p> <p>25 duties in, to, under, and in respect of the</p>	<p style="text-align: right;">Page 173</p> <p>1 D. McIsaac</p> <p>2 Account, as of the Effective Date including with</p> <p>3 respect to (i) the Clearing Fund deposit; (ii)</p> <p>4 all margin deposits held by OCC with respect to</p> <p>5 the account; (iii) all settlement obligations</p> <p>6 with regard to transactions in cleared accounts;</p> <p>7 and (iv) all rights and obligations in respect</p> <p>8 of exercises of options contracts and</p> <p>9 assignments of such exercises."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you agree that under this agreement</p> <p>13 the Trustee agreed -- authorized Lehman's sale</p> <p>14 of Lehman's rights in the margin deposits that</p> <p>15 were held at the OCC without recourse or</p> <p>16 representation of warranty?</p> <p>17 MR. OXFORD: I'll object to the form</p> <p>18 of the question. Calls for a legal</p> <p>19 conclusion.</p> <p>20 A. I don't think -- I'm not a lawyer, so</p> <p>21 I don't want to talk about it, but I don't think</p> <p>22 this is selling -- this is the sale agreement.</p> <p>23 This is an agreement just to transfer at the</p> <p>24 OCC, and I assume when they say hereby</p> <p>25 acknowledge for, you know, sufficiency, without</p>

Page 174	Page 175
<p>1 D. McIsaac 2 recourse, representation, whatever has happened, 3 is in another agreement. This is not the 4 binding sale agreement, I don't think. 5 Q. This is a binding agreement, you 6 realize that, right? 7 MR. OXFORD: Objection to form. Calls 8 for a legal conclusion. 9 A. I think what I said is this is not a 10 sale agreement. 11 Q. Do you think that it's -- do you think 12 that the language of this provision that we just 13 looked at together suggests that Lehman was 14 going to transfer the margin deposits held by 15 the OCC to Barclays? Is that what you 16 understand this language to mean? 17 A. Yes. 18 MR. OXFORD: Objection to form. 19 Q. Do you think that -- do you think that 20 that language is clear or do you think it's 21 ambiguous in some way? 22 MR. OXFORD: Objection to form. 23 A. I think the language is clear as far 24 as the OCC goes as to what is happening with the 25 assets at the OCC.</p>	<p>1 D. McIsaac 2 Q. Okay. 3 A. It is not determining what 4 compensation was paid or how the arrangements 5 were made. All this is is between two 6 counterparties who are at the clearing org. 7 transferring their obligations from one to 8 another. 9 Q. So you assume that the sale agreement, 10 for example, that was approved by the court 11 suggests that the posted margin would be 12 transferred and then this agreement would make 13 sense to you; is that what you're saying? 14 MR. OXFORD: Objection to form. 15 Misstates the witness's testimony. 16 You can answer. 17 A. I think the sale agreement would 18 denote what was being paid for the assets, not 19 how they were being transferred. 20 Q. And this would denote how it's being 21 transferred? 22 MR. OXFORD: Objection. Form. 23 A. This would denote the authority for 24 OCC to transfer it. You have a sale agreement 25 and you may have another agreement on how you're</p>
Page 176	Page 177
<p>1 D. McIsaac 2 going to effectually move moneys back and forth. 3 Usually you convert, do a conversion, and you'll 4 have some documents that talk about how you're 5 going to do that. 6 Q. But the fact that it was going to be 7 transferred, that is denoted in the TAA; is that 8 right? 9 MR. OXFORD: Objection. Form. 10 A. This is a vehicle to move the Lehman 11 option boxes at OCC into Barclays' name. 12 Q. And that would include the margin 13 deposits? 14 A. I believe it includes everything 15 that's denoted here, which is the margin 16 deposits is part of it. 17 Q. Okay. What do you understand "without 18 recourse" to mean? 19 MR. OXFORD: Objection. Form. Calls 20 for a legal conclusion. 21 You can answer. 22 A. I'm not sure what it means in this 23 case. 24 Q. What do you generally understand the 25 term "without recourse" to mean?</p>	<p>1 D. McIsaac 2 A. I would guess there's no recourse to 3 the OCC if something went wrong. 4 Q. You don't think it may mean without 5 recourse to Barclays for any of the money that 6 Lehman is transferring to Barclays? 7 MR. OXFORD: Objection. Form. Asked 8 and answered. Calls for a legal conclusion. 9 You can answer again. 10 A. As I said, I think this means recourse 11 to the OCC. 12 Q. Is it possible that it means without 13 recourse to anyone? 14 MR. OXFORD: Objection. Calls for a 15 legal conclusion. 16 A. It's a legal document. I'll let the 17 lawyers decide. 18 Q. Okay. I'd like to go back in your 19 report to page 23 again where you say that "a 20 rational seller would not include margin in the 21 deal unless it was being compensated dollar for 22 dollar," do you see that? 23 A. Could you point out what paragraph? 24 I'm sorry. 25 Q. Page 23 at the last --</p>

Page 178	Page 179
<p>1 D. McIsaac 2 A. Got it. Sorry. 3 Q. You see that language? 4 A. Uh-huh. 5 Q. I'm handing you -- I'm going to mark 6 it as an exhibit -- Exhibit 688. 7 (Exhibit 688, Deposition of Bart 8 McDade, marked for identification, as of 9 this date.) 10 Q. If you could turn with me to page 275. 11 This is testimony of Bart McDade. Are you 12 familiar with that name? Do you know who he is? 13 A. I believe he might have been the 14 president at Lehman Brothers, Inc. 15 Q. Is it your understanding that he was 16 involved in the negotiations of the transaction 17 in September of 2008 between Lehman and 18 Barclays? 19 A. I believe he was, but I don't know if 20 I've ever seen anything that said what his role 21 was in it. 22 Q. Okay. On page 275, starting at line 23 3, Mr. McDade was asked: "Did you understand 24 that, in addition to the long positions and the 25 short positions that Lehman had at OCC, it also</p>	<p>1 D. McIsaac 2 had additional cash and assets that were 3 deposited as margin and also clearing funds 4 deposited at the OCC?" Do you see that 5 question? 6 A. Yes. 7 Q. Mr. McDade responds, "Yes, I did, but 8 keep in mind the context that we had had assets 9 like that, for example, at the CME and they lost 10 those assets over the course of the week. So we 11 had no confidence that those were potentially 12 our assets given what had been transpiring." 13 Do you see that? 14 A. Yes. 15 Q. What do you understand Mr. McDade to 16 be suggesting in this testimony? 17 MR. OXFORD: Objection. Form. Calls 18 for speculation. 19 A. I wouldn't want to try to guess what 20 he's thinking. 21 Q. Do you have any idea what he means 22 when he's referring to the CME losing assets 23 over the course of the week? 24 A. I'm assuming based on what we said 25 before that maybe he liquidated some of their</p>
Page 180	Page 181
<p>1 D. McIsaac 2 assets. But this is a paragraph taken out of 3 this page 275, so I don't know where it is in 4 relation to what this question is referring to 5 or where the background for it is. 6 Q. You said the CME could have liquidated 7 positions. Aren't you aware that the CME in 8 fact did liquidate or auction off positions in 9 LBI's account during the week of September 15? 10 A. I said this could have been referring 11 to that. I don't know if this is referring to 12 that. I don't know what it's referring to. 13 Q. Do you know of any other actions by 14 the CME during that week that involved 15 liquidation of positions? 16 A. He doesn't say anything here about 17 liquidation of positions. He just is referring 18 to they lost assets. 19 Q. Do you know of any instance other than 20 the auction in which LBI lost assets in relation 21 to the CME account? 22 A. I don't know of any other reference 23 anywhere else of them losing assets at the CME. 24 Q. Mr. McDade says, "We had no confidence 25 that those were potentially our assets given</p>	<p>1 D. McIsaac 2 what had been transpiring," and he was saying in 3 response to a question about assets, cash and 4 assets, that were deposited as margin in its 5 clearing funds deposited at the OCC. 6 Do you understand Mr. McDade to be 7 suggesting that the assets posted at the OCC 8 were at risk? 9 MR. OXFORD: Objection. Asked and 10 answered. 11 A. Again, I don't know if I can determine 12 what Mr. McDade meant. There were a lot of 13 assets mentioned above that. I'm not sure what 14 he's referring to there. He might have been 15 referring to long positions. I don't know. 16 Q. Do you agree that Mr. McDade seemed to 17 think that there were some assets at the OCC 18 that were potentially not going to be available 19 to Lehman and that he thought the CME example 20 was evidence of that? 21 A. I don't want to speculate what he 22 meant by these words. I don't know really what 23 he meant by these words. 24 Q. Assuming Mr. McDade was referring to 25 the loss of \$1.6 billion in assets at the CME on</p>

Page 182

Page 183

1 D. McIsaac
2 September 18, and assuming for purposes of this
3 question that Mr. McDade was talking about the
4 margin and clearing funds deposited at the OCC
5 when he says they had no confidence that those
6 were potentially our assets, would you consider
7 it irrational for Mr. McDade to lack that
8 confidence?

9 MR. OXFORD: Objection to form.

10 MR. GREEN: Objection.

11 A. Again, I'm not sure what his lacking
12 of confidence is. The question is did you
13 understand that, in addition to the long
14 positions and short positions that Lehman had at
15 the OCC, it also had additional cash assets that
16 were deposited as margin, so the answer is --

17 Q. And my question assumed that the
18 assets in the answer that he gave was the assets
19 that were deposited as margin and clearing funds
20 at the OCC. So assuming that that's what the
21 assets were referring to, was it irrational for
22 Mr. McDade to lack confidence that those were
23 going to be available to Lehman?

24 MR. OXFORD: Objection. Form.

25 Assumes facts not in evidence.

1 D. McIsaac
2 A. I mean, I -- I'm having a problem
3 answering the question only because I don't know
4 what he said in reference to and what the time
5 period was that this was talking -- even talking
6 about. I don't know if this is talking about
7 the sale or anything else. I'm reading one
8 paragraph.

9 It seems somehow that he's concerned
10 about that there was confidence in that
11 potential assets -- what is he saying? "So we
12 had no confidence that those were potentially
13 our assets given to what was transpiring." I
14 don't know what he means by that. Maybe he
15 thought he sold them already. I don't know.

16 Q. Okay. If you were involved in the
17 negotiations of this transaction on behalf of
18 Lehman and you had just seen the CME auction off
19 all of your proprietary positions and transfer
20 the margin that was posted at the CME to the
21 bidders who were willing to take those positions
22 over, and then the OCC started threatening to
23 liquidate your account, would you be concerned
24 that the same thing might happen?

25 MR. OXFORD: Objection. Form.

Page 184

Page 185

1 D. McIsaac
2 A. I would take action if I thought they
3 were going to liquidate them for me and probably
4 direct my people to liquidate them before the
5 OCC had a chance to liquidate them. So I would
6 be at my best possible advantage.

7 Q. Let's assume you had tens of thousands
8 of positions, and if you tried to liquidate them
9 all in a matter of a day, you would lose a
10 substantial amount of money on that liquidation.

11 A. Again --

12 MR. OXFORD: Hold on. Is there a
13 question?

14 MS. BLOOMER: Yes, there is, if I
15 could finish.

16 MR. OXFORD: Sure.

17 Q. Would it be rational for you to fear
18 that the OCC might liquidate those positions
19 before you would get a chance to?

20 MR. OXFORD: Okay. Can we just make
21 sure we have that question in mind before --

22 THE WITNESS: Sorry.

23 MR. OXFORD: -- Mr. McIsaac answers?

24 A. Could you just read back the whole --

25 Q. Let's assume you had tens of thousands

1 D. McIsaac
2 of positions, and if you tried to liquid them
3 all in a matter of day, you would lose a
4 substantial amount of money on that liquidation.

5 Would it be rational for you to fear
6 that the OCC would liquidate those positions
7 before you would get a chance to?

8 MR. OXFORD: Objection. Form.

9 MR. KAY: Objection.

10 A. I don't know why you would fear that
11 they would be able to liquidate them before you
12 could liquidate them. I don't know why you
13 would have that fear. If you were afraid that
14 they were going to liquidate them, I would think
15 you would start liquidating your portfolio.

16 Q. If you thought the liquidation would
17 happen all in one day, would you be concerned
18 that that liquidation may cost you a substantial
19 amount of the margin you had posted in those
20 accounts?

21 MR. OXFORD: Objection. Form.

22 A. If I liquidated, it would cost me none
23 of the margin. It may cost me -- I may have
24 gains and losses in the liquidation, but at the
25 end of the day, if I liquidated everything, I

Page 186	Page 187
<p>1 D. McIsaac 2 would have no margin requirement. 3 Q. And the margin that was posted to 4 secure those positions in the event of a 5 liquidation would be accessible to the OCC, 6 correct, to cover any losses on that 7 liquidation? 8 MR. OXFORD: Objection. Form. 9 A. I thought you asked me if I was 10 liquidating them. If I was liquidating them, 11 no, they would give me back my margin. 12 Q. They would give you back your margin 13 after you had liquidated the positions and 14 settled any costs associated with that 15 liquidation, right? 16 A. Correct, any costs associated with the 17 OCC on the liquidation. 18 Q. Would they give you back your margin 19 before the positions were closed out and before 20 they had gotten protected themselves? 21 A. No, that's why I would be liquidating 22 them so that I could close out my account with 23 the OCC. 24 Q. Okay. And is there a risk that you 25 liquidated those positions and the cost of</p>	<p>1 D. McIsaac 2 liquidating the positions exceeds the margin 3 that you had posted to secure those positions? 4 MR. OXFORD: Objection. Asked and 5 answered. 6 A. I believe somebody would assess that 7 risk and determine what to do, and if they 8 thought the cost was going to exceed it, then if 9 it was liquidated, wouldn't they come back and 10 charge me for it anyway? 11 Q. How long would it take you to 12 liquidate tens of thousands of positions, do you 13 think? A day? 14 MR. OXFORD: Objection to form. 15 A. I have no idea. 16 Q. You have no idea? 17 A. I have no idea. 18 Q. Do you think it's likely that you 19 could liquidate tens of thousands of positions, 20 equities options positions in a day, without 21 substantially moving the market? 22 MR. OXFORD: Objection. Form. Asked 23 and answered. Assumes facts not evidence. 24 You can answer. 25 A. I don't know what the difference is if</p>
Page 188	Page 189
<p>1 D. McIsaac 2 you move the market whether or not you could 3 liquidate them. 4 Q. Do you understand that there could be 5 a difference in the cost of liquidating them if 6 the market price changes throughout the course 7 of the day that you're conducting your 8 liquidation? 9 A. Yes. But what does that have to do 10 with me, my ability to liquidate them? You 11 asked me could I liquidate them? I said yes. 12 Q. And the cost of liquidating them would 13 be dependent upon the impact that the sales 14 would have on the market price of what you're 15 liquidating, isn't that right? 16 A. Yes. 17 Q. CME liquidated the positions when it 18 liquidated the proprietary account on September 19 18th in a single day. 20 Do you have any reason to think that 21 the OCC would not have taken the same approach? 22 MR. OXFORD: Objection. Form. 23 A. I'm not -- I don't understand what the 24 question is. We started out my saying that the 25 firm should liquidate. Now you're asking me</p>	<p>1 D. McIsaac 2 would the OCC liquidate. 3 Q. That's right. I'm asking you a 4 different question now. 5 A. Okay. 6 Q. Which is: If the OCC were to 7 liquidate, do you have any reason to think that 8 they wouldn't have conducted that liquidation in 9 the same manner in which the CME did? 10 MR. OXFORD: Same objection. 11 A. I don't know their procedures for 12 liquidating accounts. I would assume it could 13 be similar to the CME, but in light of the CME 14 doing that, if I was Lehman, I would take -- I 15 would be proactive and do my own liquidation 16 before they liquidated me and I could lose \$1.6 17 billion. 18 Q. If you thought you couldn't avoid the 19 loss of \$1.6 billion either way, might you just 20 decide to transfer the accounts to an acquirer 21 instead of liquidating them yourself? 22 MR. OXFORD: Objection. Asked and 23 answered. Assumes facts not in evidence. 24 A. Again, I think I've said I would 25 assess the risk of doing the business, but if I</p>

Page 190	Page 191
<p>1 D. McIsaac 2 was negotiating transferring the margin, that 3 would be a part to start my negotiating. If 4 they were liquidated, that would be the amount; 5 I would negotiate from there. 6 Q. And if you assume that the liquidation 7 would cost you all of the margin, would it be 8 rational to agree to transfer the accounts and 9 transfer the margin with the accounts? 10 A. For what reason? Why would I have to 11 do that? What benefit do I get by doing that? 12 Q. Do you preserve customer positions by 13 doing that? 14 A. Are we talking about customer 15 positions or proprietary? I'm not sure what 16 we're talking about here. I thought we were 17 talking proprietary positions. That's what the 18 CME -- 19 Q. Would it preserve customer positions 20 by doing that? Let's talk about the customer 21 account. If you moved -- if you knew that you 22 were going to lose the posted margin in a 23 liquidation either way, would it be rational to 24 transfer that margin to an acquirer in order to 25 preserve the customer positions for the benefit</p>	<p>1 D. McIsaac 2 of those customers? 3 MR. OXFORD: Objection. Asked and 4 answered. Assumes facts not in evidence. 5 You can answer. 6 A. I would assume you would take all that 7 into account. The main thing I would look at is 8 that the CME liquidated the proprietary 9 positions and not the customer positions. 10 There is some, I guess some goal in 11 preserving the customer positions even from the 12 clearing orgs., so I would assume Lehman would 13 talk to the OCC and said if we liquidated all of 14 our proprietary positions, maybe they would not 15 liquidate the customer positions. That would be 16 something you would negotiate when that is 17 happening. You would discuss it when that is 18 happening. 19 Q. Assuming the parties didn't agree to 20 just transfer all of the accounts with all of 21 the margin to Barclays? 22 A. I would think you would look at all 23 your options before you decided on doing 24 something. 25 Q. Okay. And how long does it take to</p>
Page 192	Page 193
<p>1 D. McIsaac 2 analyze all of your options in the circumstances 3 that we're talking about here? 4 MR. OXFORD: Objection. Form. 5 MR. GREEN: Same objection. 6 A. I don't know how long they had to 7 prepare for these options and how long -- how 8 long it would take to call the OCC and ask them 9 the question. I'm sure you could ask them the 10 question and go from there and see what they 11 said. 12 Q. And what question would you propose 13 asking the OCC? 14 A. Well, you're -- you seem to be 15 concerned about them liquidating the account. I 16 would talk to the OCC and say, "The CME just 17 liquidated my accounts. What are your plans?" 18 Q. And -- 19 A. Or I'm sure maybe they were having 20 discussions with the OCC at the time. 21 Q. Didn't we look at an e-mail earlier 22 that showed that -- that had the discussion with 23 the OCC and the OCC told Lehman and the Trustee 24 that it was going to liquidate their accounts? 25 A. That was after the 19th.</p>	<p>1 D. McIsaac 2 Q. Okay. 3 A. The sale agreement was the 16th. 4 Q. Let's assume the threats to liquidate 5 started on the 15th. Does that change your 6 opinion? 7 MR. OXFORD: Object to the form. It 8 assumes facts not in evidence. 9 You can answer if you're able. 10 A. I don't know what happened at the time 11 and I don't know -- we're assuming if the OCC 12 came in on the 15th and said unless you 13 liquidated, if that was the case, then why on 14 the 20th were they threatening to liquidate it 15 if they already threatened to liquidate it and 16 didn't do it? I'm not sure -- 17 Q. I understand, but I want you to 18 understand that I'm trying to ask you questions 19 because you are providing an expert opinion 20 about what would have been rational under these 21 circumstances, and I'm probing that by 22 describing to you the circumstances that may or 23 may not affect your opinion. 24 So I would like you to answer my 25 questions as opposed to posing questions each</p>

Page 194	Page 195
<p>1 D. McIsaac 2 time. 3 A. Sorry about that. 4 Q. That's okay. 5 A. I -- would it be rational? It would 6 be rational to do many things. It might be 7 rational to transfer the margin. It might be 8 rational to liquidate your accounts. It may be 9 rational to find another buyer. There's a lot 10 of rational things that could be done at that 11 point in time. 12 Q. And is it fair to say that you can't 13 really say what would be truly rational if you 14 didn't understand the circumstances? 15 MR. OXFORD: Objection. Form. 16 A. I can say that based -- and I was not 17 there, I don't know what was negotiated and what 18 was discussed. I think what I laid out was 19 rational things you could do. 20 Q. How can you say that it wouldn't have 21 been rational for the Trustee to make a decision 22 under the specific circumstances that it was 23 facing at the time if you don't know the 24 specific circumstances that the Trustee was 25 facing at the time?</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. We talked about the 15th is what I 4 asked the question -- answered a question on, 5 and the Trustee wasn't involved then. So I'm 6 not sure, this question now, what's the basis of 7 it. I'm sorry. 8 Q. Right. Each question I ask is a new 9 question, so I would appreciate it if you would 10 not assume for every question I ask that I'm 11 building on a prior question. 12 A. No. No. That's why I'm asking what's 13 the basis for this question, because I don't 14 know. 15 Q. I'm asking you how you can give an 16 expert opinion about what it would have been 17 rational for the Trustee to do under a specific 18 set of facts when you don't know the 19 circumstances that the Trustee was facing at the 20 time? 21 MR. OXFORD: Objection. Form. 22 Misstates -- misstates the witness's 23 testimony. 24 But you can answer. 25 A. I don't know what went through the</p>
Page 196	Page 197
<p>1 D. McIsaac 2 Trustee's mind and what his determination was 3 and what he believed to be a rational approach 4 at that time. What I've given an opinion on is 5 what I think a rational seller would do in my 6 opinion at that point in time, how they would 7 react to what was going on. 8 Q. Doesn't that opinion require you to 9 know what was going on at that time? 10 MR. OXFORD: Objection. Form. 11 A. I believe I've stated that a rational 12 seller would negotiate the sale of the margin 13 assets. No matter what was going on at the time 14 you would do that negotiation. 15 Q. Is it fair to say that it is not your 16 opinion that a rational seller would have 17 required dollar-for-dollar compensation for 18 every dollar's worth of margin that it agreed to 19 transfer in this situation facing this Trustee 20 in September of 2008, or -- 21 MR. OXFORD: Objection. 22 Q. -- is it not your opinion? 23 MR. OXFORD: Objection. Form. Asked 24 and answered. 25 You can answer it again.</p>	<p>1 D. McIsaac 2 A. My opinion is a rational seller would 3 look for dollar for dollar, they would negotiate 4 from there, and at this point in time if there 5 were things that needed to be adjusted, people 6 negotiating the sale and the purchase would come 7 to an agreement on what was being sold and what 8 was being purchased. 9 Q. Okay. So when you say in your report 10 a rational seller would not include margin in 11 the deal unless it was being compensated dollar 12 for dollar, do you mean what you said in that 13 sentence or are you modifying it here today? 14 MR. OXFORD: Objection. Form. Asked 15 and answered. 16 You can answer it again. 17 A. You are giving me facts that were not 18 part of my opinion. What I said in my opinion 19 was a rational purchaser would want to quantify 20 the risk to determine what additional assets it 21 needed, and a rational seller would include 22 margin on dollar-for-dollar basis. 23 As you negotiate that, you may change 24 your mind. You may decide I'll take 50 cents on 25 the dollar, I may take 25 cents on the dollar, I</p>

Page 198	Page 199
<p>1 D. McIsaac</p> <p>2 may want a dollar and a half on a dollar because</p> <p>3 I think the assets are worth more. That's a</p> <p>4 negotiation that would occur at that time.</p> <p>5 Q. You might want zero --</p> <p>6 A. But the starting fact would be I would</p> <p>7 want dollar for dollar and I would negotiate</p> <p>8 from there. I would assume I would not give</p> <p>9 away assets for nothing.</p> <p>10 Q. Would you agree that there could be</p> <p>11 circumstances in which it was rational to agree</p> <p>12 to transfer the accounts in exchange for the</p> <p>13 margin that was posted to secure those accounts?</p> <p>14 MR. OXFORD: Objection. Form.</p> <p>15 A. I would agree that the seller could</p> <p>16 make a rational decision to transfer the</p> <p>17 accounts with no compensation, if that's what</p> <p>18 they wanted, based on facts and circumstances at</p> <p>19 that point in time if that's what they</p> <p>20 negotiated, but I would anticipate that that</p> <p>21 would be somehow brought into -- into the</p> <p>22 contract that that was being done and probably</p> <p>23 brought in front of the judge if he was selling</p> <p>24 assets above and beyond what was in the</p> <p>25 Clarification Letter.</p>	<p>1 D. McIsaac</p> <p>2 Q. Okay.</p> <p>3 MR. OXFORD: Trish, that's about</p> <p>4 another hour. I don't know if this is a</p> <p>5 good time to take five minutes.</p> <p>6 MS. BLOOMER: Yes, it's fine.</p> <p>7 THE VIDEOGRAPHER: The time is 3:03.</p> <p>8 This is the end of the tape labeled number</p> <p>9 4. We're going off the record.</p> <p>10 (Recess.)</p> <p>11 THE VIDEOGRAPHER: This is the start</p> <p>12 of the tape labeled number 5. The time is</p> <p>13 3:19. We're back on the record.</p> <p>14 BY MS. BLOOMER:</p> <p>15 Q. Good afternoon again.</p> <p>16 A. Good afternoon.</p> <p>17 Q. Would you consider assets that were</p> <p>18 posted as margin at a clearing organization with</p> <p>19 respect to an exchange-traded derivatives</p> <p>20 account to be an asset that's used in the</p> <p>21 business of the exchange-traded derivatives?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 A. It would be an asset that at that</p> <p>24 point in time was being used to secure the</p> <p>25 obligations. Assets used in the business may</p>
Page 200	Page 201
<p>1 D. McIsaac</p> <p>2 have a lot of different terms.</p> <p>3 Q. Do you agree that posted margin is</p> <p>4 associated with the exchange-traded derivatives</p> <p>5 business that it secures?</p> <p>6 A. It's associated with the</p> <p>7 exchange-traded derivatives that it's securing.</p> <p>8 I don't know what business it would be part of.</p> <p>9 Q. Can you operate an exchange-traded</p> <p>10 derivatives business without posting margin to</p> <p>11 satisfy the requirements of a clearing</p> <p>12 organization?</p> <p>13 A. I don't believe so.</p> <p>14 Q. I'm showing you Exhibit 1, which is</p> <p>15 the Asset Purchase Agreement. If you could turn</p> <p>16 to page 2 at the bottom, meaning the number on</p> <p>17 the bottom. The term "business" is defined, do</p> <p>18 you see that? It's the second full definition</p> <p>19 on page 2.</p> <p>20 A. You're saying -- oh, I'm sorry.</p> <p>21 Business, yes, I'm sorry. I was looking at the</p> <p>22 bottom, actually.</p> <p>23 Yes.</p> <p>24 Q. Would exchange-traded derivatives in</p> <p>25 your experience fall under any of the categories</p>	<p>1 D. McIsaac</p> <p>2 of LBI's businesses that are described in this</p> <p>3 definition?</p> <p>4 MR. OXFORD: Objection. Form.</p> <p>5 A. The concept of exchange-traded</p> <p>6 derivatives -- there are different parts of the</p> <p>7 business. You have futures that are clearing</p> <p>8 and execution business. You have equity options</p> <p>9 that are just -- that are transpiring for</p> <p>10 customers that are just part of the customer</p> <p>11 business as well as selling bonds, you know,</p> <p>12 stocks and bonds, and then you have trading of</p> <p>13 exchange-traded derivatives that could be part</p> <p>14 of a portfolio of assets or you could possibly</p> <p>15 just be trading them by themselves.</p> <p>16 Q. Okay. And one of the businesses</p> <p>17 that's listed here of the seller that are</p> <p>18 encompassed within the term "business" is the</p> <p>19 trading and advisory businesses. Do you see</p> <p>20 that?</p> <p>21 A. Uh-huh. I see fixed income and</p> <p>22 equities cash trading.</p> <p>23 Q. And then in the next line do you see</p> <p>24 trading and advisory businesses?</p> <p>25 A. Yes.</p>

Page 202	Page 203
<p>1 D. McIsaac</p> <p>2 Q. Would exchange-traded derivatives that</p> <p>3 were proprietary to LBI be considered part of</p> <p>4 the trading business of LBI?</p> <p>5 A. I'm a little confused why trading</p> <p>6 would be used in two places. I'm not sure</p> <p>7 what -- what the differentiation is between the</p> <p>8 two of them. Fixed income and equities cash</p> <p>9 trading and trading and advisory business, I</p> <p>10 just don't know why it would be referenced</p> <p>11 twice.</p> <p>12 Q. Is it your understanding that the</p> <p>13 exchange-traded derivatives were a portion of</p> <p>14 the trading business that Barclays acquired?</p> <p>15 MR. OXFORD: Objection. Form.</p> <p>16 A. The proprietary part of it would have</p> <p>17 been part of the exchange -- the trading</p> <p>18 businesses that they acquired.</p> <p>19 Q. And would you agree that the customer</p> <p>20 futures business that Barclays acquired from</p> <p>21 Lehman was -- I'm sorry. Would you agree that</p> <p>22 the customer futures business that LBI conducted</p> <p>23 prior to September 22, 2008 would fall within</p> <p>24 the definition of LBI's business as a futures</p> <p>25 commission merchant?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If you turn to page 4 -- I'm</p> <p>4 sorry, page 10. I'm sorry, 6.</p> <p>5 If you turn to page 6 of the Asset</p> <p>6 Purchase Agreement, do you see the definition of</p> <p>7 "purchased assets" that begins around the middle</p> <p>8 of that page?</p> <p>9 A. Uh-huh.</p> <p>10 Q. It says, "Purchased Assets means all</p> <p>11 of the assets of seller and its subsidiaries</p> <p>12 used in connection with the business, excluding</p> <p>13 the excluded assets," and then the word</p> <p>14 "including," do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And the term "business" that's</p> <p>17 capitalized there, do you understand that to be</p> <p>18 referring to the business definition that we</p> <p>19 just looked at on the prior page?</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. If you look at page 10, there's</p> <p>22 a word "including" that's defined. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see that it says, "The word</p>
Page 204	Page 205
<p>1 D. McIsaac</p> <p>2 'including' or any variation thereof means</p> <p>3 including, without limitation, and shall not be</p> <p>4 construed to limit any general statement that it</p> <p>5 follows to the specific or similar terms or</p> <p>6 matters immediately following it."</p> <p>7 A. Yes.</p> <p>8 Q. Turning back to page 6, the definition</p> <p>9 of "purchased assets," given the definition we</p> <p>10 just looked at of the term "including," is it</p> <p>11 fair to say that the "purchased assets"</p> <p>12 definition is not limited by the subparagraphs</p> <p>13 that follow the word "including"?</p> <p>14 MR. OXFORD: Objection. Form. Calls</p> <p>15 for a legal conclusion.</p> <p>16 A. Yeah, I'm not a lawyer, so this is --</p> <p>17 I'm not sure what it means and if you had before</p> <p>18 businesses, why you needed additional, but I</p> <p>19 don't know. I'm not -- I don't want to -- I</p> <p>20 don't want to give an opinion on a legal</p> <p>21 document.</p> <p>22 Q. Okay. You understand what the term</p> <p>23 "including without limitation" means?</p> <p>24 A. I believe so.</p> <p>25 Q. What does that mean?</p>	<p>1 D. McIsaac</p> <p>2 A. It means including without limitation.</p> <p>3 Q. And you understand what that means,</p> <p>4 the common usage of that term means?</p> <p>5 A. I -- "including without limitation"</p> <p>6 means including, we're not limiting it to what</p> <p>7 it means, what follows it.</p> <p>8 Q. Okay. Thank you. Is it your opinion</p> <p>9 that the margin that was posted in LBI's</p> <p>10 accounts at the OCC were not assets of LBI used</p> <p>11 in connection with the business, as that term is</p> <p>12 defined in this agreement?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 Misstates the document. Calls for a legal</p> <p>15 conclusion.</p> <p>16 You can answer.</p> <p>17 A. Could you re-read that question?</p> <p>18 Q. Is it your opinion that the margin</p> <p>19 that was posted in LBI's accounts at the OCC</p> <p>20 were not assets of LBI used in connection with</p> <p>21 the business as that term is defined in this</p> <p>22 agreement?</p> <p>23 MR. OXFORD: Objection. Form. Again,</p> <p>24 misstates the document. Calls for a legal</p> <p>25 conclusion.</p>

Page 206	Page 207
<p>1 D. McIsaac</p> <p>2 A. There was a negative in there and I'm</p> <p>3 not sure -- I mean, I don't know what that term</p> <p>4 means in a legal document.</p> <p>5 Q. Are the assets posted as margin at the</p> <p>6 OCC assets of LBI?</p> <p>7 A. They may or may not be assets of LBI.</p> <p>8 Q. Do you know in the context of the</p> <p>9 assets at the OCC as of September 19, 2008</p> <p>10 whether they were assets of LBI or assets of</p> <p>11 someone else?</p> <p>12 A. The assets posted there could have</p> <p>13 been derived from many factions. If they put</p> <p>14 Treasury bills up, it could have been Treasury</p> <p>15 bills owned by LBI. It could have been Treasury</p> <p>16 bills that were accepted as collateral against a</p> <p>17 receivable for a reverse repo or a stock borrow.</p> <p>18 It could be customers or non-customers assets.</p> <p>19 Q. Do you understand the Trustee's</p> <p>20 position in this case to be the assets at the</p> <p>21 OCC were not LBI proprietary assets?</p> <p>22 A. I don't know if I have seen that -- I</p> <p>23 don't recall seeing that specific phrase, that</p> <p>24 they were not proprietary assets.</p> <p>25 Q. You reviewed this agreement when you</p>	<p>1 D. McIsaac</p> <p>2 provided your opinion; is that right?</p> <p>3 A. Yes. Uh-huh.</p> <p>4 Q. And is it your opinion that this</p> <p>5 agreement does not encompass the margin assets</p> <p>6 that were posted at the OCC?</p> <p>7 A. I don't believe I've seen anything in</p> <p>8 here that references margin assets, and it</p> <p>9 appeared to be a very substantial asset class.</p> <p>10 I would have thought they would have been broken</p> <p>11 out in the agreement as to what was happening</p> <p>12 with the assets that were posted at various</p> <p>13 exchanges.</p> <p>14 Q. You said earlier when we looked at the</p> <p>15 Transfer and Assumption Agreement that you would</p> <p>16 have assumed that the purchase agreement would</p> <p>17 document the agreement to transfer margin to</p> <p>18 Barclays if that were the parties' agreement,</p> <p>19 correct?</p> <p>20 A. Right.</p> <p>21 Q. Do you think this purchase agreement</p> <p>22 accomplishes that when it says "all assets of</p> <p>23 seller used in connection with the business,</p> <p>24 excluding the excluded assets, are purchased</p> <p>25 assets"?</p>
Page 208	Page 209
<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form. Asked</p> <p>3 and answered. You can answer.</p> <p>4 A. At points in time you may use assets</p> <p>5 to secure your obligations. I don't know if</p> <p>6 they would be considered assets of the business.</p> <p>7 If they were \$700 million today and \$200 million</p> <p>8 tomorrow, what would they be? So I would think</p> <p>9 if you were trying to transfer or somehow</p> <p>10 include those margin assets, you would define</p> <p>11 them and what the value was because that value</p> <p>12 could have changed drastically from day one to</p> <p>13 whenever you're consummating the deal. As you</p> <p>14 saw, the margin requirements go significantly up</p> <p>15 and then down.</p> <p>16 Q. Is it your understanding that the</p> <p>17 parties agreed that they would include specific</p> <p>18 references to every asset that Barclays was to</p> <p>19 acquire in this transaction?</p> <p>20 MR. OXFORD: Objection. Form.</p> <p>21 A. I don't know if they did or not. I</p> <p>22 would think significant assets such as margin</p> <p>23 would be noted and what was happening with it.</p> <p>24 Q. The agreement says that all of the</p> <p>25 assets used in connection with the business are</p>	<p>1 D. McIsaac</p> <p>2 purchased assets, excluding the excluded assets.</p> <p>3 Would you expect that since margin was</p> <p>4 such a significant asset, as you say, that it</p> <p>5 would have, therefore, had to have been -- that</p> <p>6 it would, therefore, have been logical to</p> <p>7 reference it in the excluded assets section if</p> <p>8 indeed the parties intended to exclude it?</p> <p>9 MR. OXFORD: Objection. Form.</p> <p>10 A. I don't know if you -- I would always</p> <p>11 include what you're buying, not necessarily</p> <p>12 exclude what you're not buying. I think to make</p> <p>13 something really understandable, you would say</p> <p>14 include this, include that.</p> <p>15 Like I said, the margin at the point</p> <p>16 in time when this was done might have been a</p> <p>17 billion dollars. On the 19th, it might have</p> <p>18 been \$100 million. I think you would define</p> <p>19 that at the time you were agreeing to the</p> <p>20 contract so that you made sure both parties came</p> <p>21 to what their -- with what they agreed to.</p> <p>22 So if it was on the 15th or something,</p> <p>23 it was one item, one balance, later on it's a</p> <p>24 different balance. I don't think an asset like</p> <p>25 that would be included without some kind of</p>

<p style="text-align: right;">Page 210</p> <p>1 D. McIsaac</p> <p>2 reference.</p> <p>3 Q. So you would assume the parties to a</p> <p>4 transaction would specifically identify the</p> <p>5 included assets as opposed to saying we're</p> <p>6 getting everything except the excluded assets;</p> <p>7 is that your testimony?</p> <p>8 A. I would expect if it's an asset like</p> <p>9 margin, that would go up and down in value on a</p> <p>10 daily basis. If you were negotiating to buy</p> <p>11 that asset, you would want to put into the</p> <p>12 contract what the value of that asset is, what</p> <p>13 that asset is that you're receiving.</p> <p>14 Open-ended margin could be, again, it</p> <p>15 could have been a dollar. Would they have</p> <p>16 accepted it if it was only a dollar? I don't</p> <p>17 know. So I think for any ambiguity, you would</p> <p>18 include the assets and you would either state at</p> <p>19 the time of the transaction or put a dollar</p> <p>20 amount at that point in time so that if they</p> <p>21 were used at one point in time, they weren't</p> <p>22 sold out, you know, five days later.</p> <p>23 Q. If you were advising LBI on this deal,</p> <p>24 and you saw that the agreement was structured so</p> <p>25 that all of the assets were purchased assets</p>	<p style="text-align: right;">Page 211</p> <p>1 D. McIsaac</p> <p>2 except what was excluded, would you advise them</p> <p>3 that to avoid ambiguity they should reference</p> <p>4 margin in the excluded assets section?</p> <p>5 MR. OXFORD: Objection to form.</p> <p>6 A. I would probably advise the seller --</p> <p>7 the buyer to make sure that they put in all the</p> <p>8 assets that they wanted to make sure they got in</p> <p>9 the agreement, not --</p> <p>10 Q. I'm not asking you what you would do</p> <p>11 for the buyer. I'm asking you if you were</p> <p>12 advising the seller and their agreement stated</p> <p>13 "purchased assets means all of the assets of</p> <p>14 seller used in connection with the business,</p> <p>15 excluding the excluded assets, would you advise</p> <p>16 him that it was prudent to reference margin as</p> <p>17 an excluded asset given how substantial the</p> <p>18 value was.</p> <p>19 A. I would advise them to reference it</p> <p>20 either as excluded or included.</p> <p>21 Q. Included if it was included and</p> <p>22 excluded if it was excluded?</p> <p>23 A. Right.</p> <p>24 Q. Okay. Is it your understanding that</p> <p>25 Barclays knew on September 16, 2008 what the</p>
<p style="text-align: right;">Page 212</p> <p>1 D. McIsaac</p> <p>2 margin was worth at the OCC and at the other</p> <p>3 clearing organizations to which LBI traded in</p> <p>4 exchange-traded derivatives?</p> <p>5 A. I believe I've seen some e-mail</p> <p>6 traffic that noted that the legal counsel for</p> <p>7 Barclays had been discussing margin requirements</p> <p>8 of various exchanges. I think Mr. Leitner</p> <p>9 pointed out that Barclays was monitoring their</p> <p>10 exposure by knowing what the margin values were.</p> <p>11 So I assume they knew something that was going</p> <p>12 on at the exchanges.</p> <p>13 Q. Is it your opinion that you would have</p> <p>14 advised the acquirer to reference margin</p> <p>15 specifically because it was so substantial in</p> <p>16 value assumes that Barclays knew on September 16</p> <p>17 what the value of the margin was; is that</p> <p>18 correct?</p> <p>19 A. I would think they would know what</p> <p>20 assets they were buying.</p> <p>21 Q. And does your opinion assume that they</p> <p>22 knew what assets, what the value of the margin</p> <p>23 was that they were buying on April -- on</p> <p>24 September 16, 2008 when they entered into this</p> <p>25 Asset Purchase Agreement?</p>	<p style="text-align: right;">Page 213</p> <p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. I would have to assume somebody</p> <p>4 purchasing assets would know the value of the</p> <p>5 assets they were purchasing, if not what they</p> <p>6 thought the value was, at least what the value</p> <p>7 was on the seller's records.</p> <p>8 Q. I'm not trying to be argumentative.</p> <p>9 You've given an opinion in your report, and we</p> <p>10 can look at the opinion if you don't recall it.</p> <p>11 You've given an opinion in your report</p> <p>12 that, given how much this margin was worth, you</p> <p>13 would have expected the acquirer to reference it</p> <p>14 specifically as a purchased asset --</p> <p>15 A. Yes.</p> <p>16 Q. -- if indeed they thought it was being</p> <p>17 purchased.</p> <p>18 I'm asking you whether that opinion</p> <p>19 assumes that Barclays knew on September 16, 2008</p> <p>20 what the value of the margin was that LBI held</p> <p>21 or that LBI had posted to secure the</p> <p>22 exchange-traded derivatives?</p> <p>23 A. Again, I would assume they knew the</p> <p>24 value of what they were purchasing. So I --</p> <p>25 Q. Does your opinion --</p>

Page 214	Page 215
<p>1 D. McIsaac</p> <p>2 A. My opinion assumes that they would</p> <p>3 know the value they were purchasing. I would</p> <p>4 assume most people wouldn't buy something that</p> <p>5 they didn't know what they were buying.</p> <p>6 Q. Would you assume that most people</p> <p>7 wouldn't buy an entire broker-dealer business</p> <p>8 based on 48 hours of negotiations as well?</p> <p>9 MR. OXFORD: Objection. Form.</p> <p>10 Assumes facts not in evidence.</p> <p>11 A. From what I understand, Bank of</p> <p>12 America bought Lehman, more than just the</p> <p>13 brokerage business, over a weekend. So I think</p> <p>14 you can buy anything you want in any time period</p> <p>15 you want. I don't know how much due diligence</p> <p>16 was done in July, in August, in June.</p> <p>17 People have an understanding of the</p> <p>18 various competitors and what they do and how</p> <p>19 they manage it. There are reports out there.</p> <p>20 There's information out there. So I don't know</p> <p>21 what Barclays knew when they negotiated the</p> <p>22 deal.</p> <p>23 I don't know how much time they took</p> <p>24 to write this versus how much time it took to</p> <p>25 determine what they were buying.</p>	<p>1 D. McIsaac</p> <p>2 Q. And again, you think it's possible</p> <p>3 that they executed this agreement before they</p> <p>4 knew what they were buying?</p> <p>5 MR. OXFORD: Objection. Form.</p> <p>6 Misstates the witness's testimony.</p> <p>7 You can answer.</p> <p>8 A. I believe I said I assume when they</p> <p>9 execute an agreement they knew what they were</p> <p>10 buying.</p> <p>11 Q. Is that assumption based on any</p> <p>12 preliminary assumptions about how much time</p> <p>13 Barclays had to do the due diligence prior to</p> <p>14 the time it entered into this transaction?</p> <p>15 A. I can't fathom why anybody would buy</p> <p>16 anything without knowing what they were buying.</p> <p>17 So if they took 48 hours and thought that was</p> <p>18 enough to assess what they were buying and put a</p> <p>19 value on it, then that's what they did.</p> <p>20 I don't know -- I can't be in Barclays</p> <p>21 shoes to figure out what was in their mind when</p> <p>22 they bought this. Evidently, they thought they</p> <p>23 were getting valuable assets. How much they</p> <p>24 were getting and what they were willing to pay</p> <p>25 for it they had to make an assessment, and I</p>
Page 216	Page 217
<p>1 D. McIsaac</p> <p>2 assume they took whatever time it needed to take</p> <p>3 to do that assessment.</p> <p>4 And I'm assuming that this transaction</p> <p>5 had to be approved by the board of directors.</p> <p>6 They had to provide some information to their</p> <p>7 board of directors on a purchase of this size.</p> <p>8 I don't think they went to</p> <p>9 the board -- would have gone to the board of</p> <p>10 directors and said we're going to buy this, but</p> <p>11 we don't know what we're buying. So I would</p> <p>12 think they would have had a clear understanding</p> <p>13 of what they were buying.</p> <p>14 Q. Might they have had a clear</p> <p>15 understanding of what they were buying but not</p> <p>16 necessarily a clear understanding of what all of</p> <p>17 those assets were worth?</p> <p>18 A. Then what were they buying if they</p> <p>19 didn't know what they were buying, what the</p> <p>20 worth -- how could you put a price on something</p> <p>21 unless you assessed it?</p> <p>22 Q. I would appreciate it if you would</p> <p>23 answer my question.</p> <p>24 A. I'm sorry. I'm asking you, I don't</p> <p>25 believe a purchaser would enter into an</p>	<p>1 D. McIsaac</p> <p>2 agreement to purchase something without</p> <p>3 assessing what the value is that they were</p> <p>4 purchasing.</p> <p>5 Q. Okay. If you could take the Sale</p> <p>6 Order transcript that we had looked at earlier,</p> <p>7 it's Exhibit 442, and if you could turn to</p> <p>8 page -- if you could turn to page 60.</p> <p>9 At the bottom of page 60, the hearing</p> <p>10 transcript reads: "We cannot take the risk of</p> <p>11 rejecting this transaction because of</p> <p>12 ambiguities, the lack of a piece of paper to</p> <p>13 support every element of the assets to be</p> <p>14 transferred, the lack of a definition as to</p> <p>15 particular items."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Is it possible that in this</p> <p>19 circumstance the parties agreed, due to the</p> <p>20 extraordinary circumstances at the time, to</p> <p>21 structure a deal in a way that they wouldn't</p> <p>22 structure under normal circumstances?</p> <p>23 MR. OXFORD: Objection. Form.</p> <p>24 A. I believe that they might structure a</p> <p>25 deal differently than they would under different</p>

Page 218	Page 219
<p>1 D. McIsaac 2 circumstances, yes. 3 Q. And is it your understanding that the 4 circumstances that existed in 2000 -- in 5 September of 2008 made it such that the parties 6 in fact conducted their negotiations and 7 structured this transaction in a manner 8 differently than they would have under normal 9 market situations, circumstances? 10 MR. OXFORD: Objection. Asked and 11 answered. 12 A. I believe I answered that saying yes, 13 I believe this was a different time and they 14 negotiated this differently than they would have 15 at other times. 16 Q. Is it possible that Lehman was willing 17 to offer terms to Barclays that a typical seller 18 wouldn't necessarily offer because of the 19 exigencies that made this transaction important 20 to Lehman? 21 MR. OXFORD: Objection. Form. 22 A. I'm not sure how -- why a firm would 23 do certain things at times. It couldn't make 24 agreements that it normally wouldn't make. I'm 25 not sure what was in Lehman's mind or Barclays'</p>	<p>1 D. McIsaac 2 mind at the time of selling this and what 3 decisions they thought they were doing and for 4 what reasons. 5 Q. I'm showing you a document marked as 6 Exhibit 689. 7 (Exhibit 689, Deposition of James 8 Kobak, marked for identification, as of this 9 date.) 10 Q. This is deposition testimony that was 11 provided on behalf of the Trustee by Mr. Kobak. 12 Are you familiar with this deposition 13 testimony? 14 A. I don't know if I've read it and 15 relied upon it. I know Mr. Kobak made 16 declarations and depositions. I don't know if 17 this was something that was in my reliance 18 materials, but I know he made the depositions. 19 Q. Okay. So you haven't necessarily -- 20 do you remember reading this deposition 21 transcript? 22 A. I don't remember, but I might have 23 read it. I don't remember. I read a few of 24 them and -- I don't know if I read this one. I 25 think I might have. I'm not sure if it was this</p>
Page 220	Page 221
<p>1 D. McIsaac 2 or the declaration. 3 Q. Fast forwarding to the time that the 4 SIPC Trustee was introduced into this matter on 5 Friday, September 19, you said that you don't 6 know what was in the minds of the parties at the 7 time that they were considering this 8 transaction; is that right? 9 A. Uh-huh. 10 Q. If you could turn to page 282 of Mr. 11 Kobak's deposition testimony, starting on line 12 14, the question says, and this is, for context, 13 talking about a Collateral Agreement that the 14 Trustee signed on Friday, September 19, either 15 at or shortly after the sale hearing: 16 It says, "LBI has assigned to Barclays 17 all rights and securities, cash, and other 18 property defined as collateral pledged by LBI to 19 the Options Clearing Corporation and held for 20 OCC's benefit at JPMorgan Chase. Did you see 21 that?" The answer is, "Yes." 22 The next question: "And was it your 23 understanding that that's what the Trustee was 24 authorizing when you signed this?" And the 25 answer is, "Yes, consistent with the overall</p>	<p>1 D. McIsaac 2 deal that there be no cash excess that would go 3 to Barclays, because that would be inconsistent 4 with the no cash and that this wouldn't make the 5 deal so rich that it would be way beyond the 6 parameters that we discussed earlier." 7 Do you see that testimony? 8 A. Yes. 9 Q. Okay. The next question says: "Did 10 you tell anyone this? When you say you signed 11 this consistent with the idea that there would 12 be no cash, this says cash. This says cash will 13 be transferred to Barclays." And the answer, 14 "Yeah, but cash would be transferred against the 15 liabilities. What I'm saying is nobody told us 16 there might be in excess of a billion dollars of 17 cash or something like that that would end up at 18 Barclays when the deal was no cash and when 19 there was an economic parameter to the deal." 20 Question: "So to the extent the cash 21 was simply needed to cover the liabilities, you 22 thought it was possible to be included in the 23 deal; is that correct?" 24 Answer: "Yes." 25 Do you recall having ever seen this</p>

Page 222	Page 223
<p>1 D. McIsaac 2 testimony before? 3 A. I don't recall, but I might have seen 4 it, yes. I don't recall right now, but it seems 5 something I might have heard or seen. 6 Q. Would you agree that this testimony is 7 speaking to the understanding that the Trustee 8 and Mr. Kobak had at the time on September 19, 9 2008? 10 MR. OXFORD: Objection. Form. 11 A. I mean, it's taken out of context. 12 I'm reading two pages of a 300-and-some-page 13 document. It looks like Mr. Kobak is stating 14 that he was transferring or willing to transfer 15 assets that he thought was part of the deal. 16 Q. And those assets included collateral 17 pledged by LBI to the Options Clearing 18 Corporation and held for OCC's benefit at 19 JPMorgan Chase, right? 20 A. That's what it says, yes. 21 Q. That -- 22 A. That's what the question says. 23 Q. You understand that to be different 24 from property, customer property held by LBI to 25 secure customer positions?</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. I'm not sure of what assets were being 4 held at JPMorgan Chase. It looks like he's 5 saying cash in this reference and it looks like 6 he's assuming it was part of the liabilities. 7 So it might have been the cash that was payable 8 to the customers who put up margin for the OCC 9 trades, and he thought he was just transferring 10 the cash against those liabilities. 11 Q. Would that be cash held by LBI or cash 12 held by JPMorgan under your interpretation of 13 what this may be referring to? 14 A. It would be cash held by LBI at 15 JPMorgan. 16 Q. For whose benefit? 17 A. LBI's. 18 Q. Okay. This seems to be talking about 19 cash that was held for the OCC's benefit at 20 JPMorgan Chase, do you see that? 21 A. It looks like it's being pledged to 22 the OCC for the benefit of LBI and it's held at 23 Chase. 24 Q. And you agree that this is property 25 held at Chase, not at LBI?</p>
Page 224	Page 225
<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. It's property held at LBI on deposit 4 at Chase. 5 Q. I'm showing you what has been marked 6 as Exhibit 25. Do you recognize this document? 7 A. I believe this is what's considered 8 the Clarification Letter. 9 Q. Did you rely on this in forming your 10 opinions in this case? 11 A. I reviewed this, yes. 12 Q. And is it your opinion that this 13 agreement does not encompass property held in 14 respect of OCC accounts to secure proprietary 15 positions of LBI as of September 19, 2008? 16 MR. OXFORD: Objection. Form. 17 A. I believe this does not indicate the 18 transfer or sale of LBI assets put up as margin 19 at the OCC. 20 Q. If you look at the top of page 2, 21 capital letter C in that first paragraph. And 22 this is a definition of the purchased assets. 23 It says, "Exchange-traded derivatives and any 24 property that may be held to secure obligations 25 under such derivatives." Do you see that?</p>	<p>1 D. McIsaac 2 A. Yes, I do. 3 Q. Do you agree with me that this 4 language is not limited to customer property? 5 MR. OXFORD: Objection. Form. 6 A. I don't know what the parenthetical 7 really means. I think in my report, if that's 8 what you're asking me, I think the 9 parenthetical, to be clear, if this was margin 10 posted, it would say -- it would say assets 11 posted to secure LBI's obligations. It doesn't 12 say that, so it's kind of ambiguous on what I'm 13 holding and what this clause means. 14 To me it means I'm holding it, which 15 means probably customers have given it to me to 16 secure their assets -- their transactions. 17 Q. It doesn't strike you as ambiguous 18 that it doesn't say customer property and you're 19 willing to assume that any property is 20 customer -- strike that. Do you agree with me 21 that the language here nowhere references 22 customer property? 23 A. Yes. 24 Q. Do you see the reference to any 25 property?</p>

Page 226	Page 227
<p>1 D. McIsaac</p> <p>2 A. No. I see a reference to any</p> <p>3 property.</p> <p>4 Q. No reference to customer property</p> <p>5 appears on the face of this document; is that</p> <p>6 right?</p> <p>7 MR. OXFORD: Objection. Form.</p> <p>8 A. I believe that's correct. I haven't</p> <p>9 read the rest of it, but in that clause there's</p> <p>10 nothing there. I don't know if in -- if</p> <p>11 anything in paragraph C says anything to -- you</p> <p>12 said the whole page. I don't know if anything</p> <p>13 in paragraph C says anything. I'm just looking</p> <p>14 at this clause you're talking about.</p> <p>15 Q. Uh-huh.</p> <p>16 MR. OXFORD: Just so we're clear,</p> <p>17 Trish's question was about the whole</p> <p>18 document.</p> <p>19 MS. BLOOMER: No, my question is about</p> <p>20 this parenthetical.</p> <p>21 MR. OXFORD: Okay. Then you might</p> <p>22 want to clear up the record.</p> <p>23 Q. Does this parenthetical reference the</p> <p>24 term "customer property" or does it say "any</p> <p>25 property"?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. It says "any property."</p> <p>4 Q. You said that you thought it would be</p> <p>5 ambiguous to say "property that may be held" if</p> <p>6 what you really meant was "property posted,"</p> <p>7 correct?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. Is it also ambiguous to say "any</p> <p>10 property" if what you mean is "customer</p> <p>11 property"?</p> <p>12 A. I'm looking at the whole phrase and it</p> <p>13 says "any property that may be held to secure."</p> <p>14 I'm looking at the whole phrase, not just the</p> <p>15 two little words. I'm looking at the whole</p> <p>16 phrase and the way it's written.</p> <p>17 Q. And does the whole phrase reference</p> <p>18 customer property?</p> <p>19 MR. OXFORD: Objection. Form. Asked</p> <p>20 and answered.</p> <p>21 A. I believe to me, my opinion, this</p> <p>22 would refer to assets held by LBI, and the only</p> <p>23 assets they would have to secure obligations on</p> <p>24 the derivatives would be with customers or for</p> <p>25 counterparties.</p>
Page 228	Page 229
<p>1 D. McIsaac</p> <p>2 Q. Does the language say "any property</p> <p>3 that may be held by LBI"?</p> <p>4 A. No, but to me, my opinion held to</p> <p>5 secure, if I'm writing this, if I'm part of this</p> <p>6 agreement, I would have to be holding it, not</p> <p>7 anybody else; and holding it, I mean and I have</p> <p>8 the obligation to return it to somebody.</p> <p>9 Q. Do you think the parties could have</p> <p>10 written "it may be held by or on behalf of LBI"</p> <p>11 if that's what they intended?</p> <p>12 MR. OXFORD: Objection. Form.</p> <p>13 A. I believe they could have written "and</p> <p>14 any property posted by LBI to secure their</p> <p>15 obligations."</p> <p>16 Q. Okay. If you look with me at</p> <p>17 paragraph 8 on page 4, the third line down</p> <p>18 reads, "Any and all property of any customer,</p> <p>19 including any held by or on behalf of LBI, to</p> <p>20 secure the obligations of any customer whose</p> <p>21 accounts are being transferred to purchaser as</p> <p>22 part of the business." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it says "purchaser shall receive</p> <p>25 for the account of the customer any and all</p>	<p>1 D. McIsaac</p> <p>2 property of any customer, including any held by</p> <p>3 or on behalf of LBI to secure the obligations of</p> <p>4 any customer." Do you see that?</p> <p>5 A. Just let me read it again, please.</p> <p>6 "Shall receive ..."</p> <p>7 Yes.</p> <p>8 Q. So would you agree that in this</p> <p>9 paragraph when the parties intended to limit a</p> <p>10 phrase to "customer property held by or on</p> <p>11 behalf of LBI," they said "property of any</p> <p>12 customer held by or on behalf of LBI"?</p> <p>13 MR. OXFORD: Objection to form.</p> <p>14 Q. Would you agree with that?</p> <p>15 A. What -- excuse me. What was the</p> <p>16 question?</p> <p>17 Q. Would you agree that in this paragraph</p> <p>18 when the parties intended to limit a phrase to</p> <p>19 "customer property held by or on behalf of LBI,"</p> <p>20 they said "property of any customer held by or</p> <p>21 on behalf of LBI"?</p> <p>22 A. It says here "held by or on behalf of</p> <p>23 LBI." So I'm assuming that's what they wanted</p> <p>24 it to mean, but yes, I can't read into their</p> <p>25 mind what they said because I think you were</p>

Page 230	Page 231
<p>1 D. McIsaac 2 referring is this what they meant to say, and I 3 don't know if this is what they meant to say. 4 This is what they said. 5 Q. And back to page 2, they didn't say 6 "any property of any customer," did they? 7 A. No, they did not. 8 Q. And they didn't say "by or on behalf 9 of LBI," did they? 10 A. No, they did not. 11 Q. Okay. 12 A. But they -- 13 Q. But you would read this language -- 14 MR. OXFORD: Excuse me, Trish. Mr. 15 McIsaac wasn't finished with his last 16 sentence. 17 A. But as clearly as they defined it 18 here, why wouldn't they have clearly defined it 19 over here? 20 Q. Perhaps because -- could it be because 21 they were referring to two different categories 22 of assets? 23 A. I don't know, but they clearly -- 24 Q. Is that possible? 25 A. I guess anything is possible. I don't</p>	<p>1 D. McIsaac 2 know why they would have been so clear in a 3 definition here and not so clear in the 4 definition over here. 5 Q. Did you consider that they were being 6 perfectly clear and that they were referring to 7 two different sets of assets and that's why they 8 described them differently? 9 MR. OXFORD: Objection. Form. Asked 10 and answered. 11 A. To me, it wasn't clear. So, no, it 12 wouldn't have been clear to me because to me if 13 I was transferring the margin that I had posted 14 at exchanges, that would be the clear 15 definition. 16 I think over here, where they talk 17 about -- they're talking about held by and on 18 the behalf of LBI, that means LBI is holding it, 19 but it may be at JPMorgan or someplace else. So 20 I think this is fairly clear. I don't think the 21 first clause is that clear as to what they meant 22 by it. 23 Q. Do you agree that exchanges and 24 clearing corporations hold property to secure 25 obligations of derivatives that their clearing</p>
Page 232	Page 233
<p>1 D. McIsaac 2 members hold? 3 A. Clearing organizations require margin 4 to be held for the obligations of the clearing 5 member. I believe that was your question. 6 Q. So the OCC holds property just as LBI 7 holds property; is that right? 8 A. That's correct, and the OCC's 9 responsibility would be to return to me the 10 property because I posted it with them and my 11 responsibility no matter where it is to return 12 that property to whoever gave it to me no matter 13 where I posted it. 14 Q. In your opinion does paragraph 8 15 encompass anything that is not encompassed by 16 the parenthetical on page 2? 17 MR. OXFORD: Objection. Form. You 18 mean the whole of paragraph 8 or to specific 19 subsections you referred him to earlier? 20 MS. BLOOMER: I mean the sentence that 21 we've been focusing on, which starts "in 22 connection therewith" and reads through 23 "whose accounts are being transferred to 24 purchaser as part of the business." 25 Q. Do you see the language that I refer</p>	<p>1 D. McIsaac 2 you to? Does this encompass anything, in your 3 opinion, that's not already encompassed by 4 paragraph C on page 2 and the parenthetical? 5 MR. OXFORD: Objection. Form. Calls 6 for a legal conclusion, but you can answer. 7 A. Yeah, I mean, it's a legal document. 8 My assumption is that on this is this is not 9 just referring to exchange-traded derivatives, 10 this is referring to the entire account of a 11 customer that would be transferred to Barclays. 12 So if they were holding equity securities at DTC 13 for the customer, we would transfer them to 14 Barclays. 15 Q. And in your opinion, the parenthetical 16 on page 2 -- do you believe that the 17 parenthetical on page 2 is unambiguous in terms 18 of the property that it's referring to? 19 MR. OXFORD: Objection. Asked and 20 answered. 21 A. It doesn't define the property. It 22 just defines any property that may be held to 23 secure obligations under such derivatives. 24 Again, I believe that's any property held by 25 LBI, not posted by LBI, because if it was</p>

Page 234	Page 235
<p>1 D. McIsaac 2 posted, I think the words would have been used 3 "posted" or "held by" or someplace else further 4 clarification I think would be included. 5 Q. Are assets posted at the OCC by LBI as 6 of September 19, 2008 property held by the OCC 7 to secure obligations under the derivatives held 8 in the OCC accounts? 9 A. I just want to make sure I have your 10 question clear. I believe the question was, is 11 the property held at OCC there to secure the 12 obligations in the accounts at OCC? 13 Q. No, that wasn't my question. 14 A. Okay. 15 Q. Are assets posted at the OCC by LBI 16 property that is held by the OCC to secure 17 obligations under the derivatives in the OCC 18 accounts? 19 MR. OXFORD: Objection. Form. 20 A. It's property held by OCC. It may be 21 excess, but it's in the accounts to secure it. 22 Some of it may be used to secure obligations. 23 Some of it may be excess collateral. 24 Q. Okay. I'm showing you a document 25 that's marked as Exhibit 690.</p>	<p>1 D. McIsaac 2 (Exhibit 690, a document bearing Bates 3 Nos. CGSH33921 through 922, marked for 4 identification, as of this date.) 5 Q. Could you take a moment to review this 6 e-mail. 7 (Document review.) 8 Q. Have you had a chance to review the 9 document? 10 A. Yes. Yes. 11 Q. The first sentence of the e-mail from 12 James McDaniel at Sidley -- 13 Do you know who James McDaniel at 14 Sidley is? 15 A. I believe he's one of their counsels. 16 Q. One of whose counsel? 17 A. Sidley's counsels for the OCC. 18 Q. For the OCC. Okay. 19 And on September 20, this e-mail is 20 sent. You see that it's copied to several 21 individuals from Weil? Do you understand that 22 to be Weil Gotshal? 23 A. Yes. 24 Q. And you understand that that is the 25 law firm that represented LBHI in this</p>
Page 236	Page 237
<p>1 D. McIsaac 2 transaction? 3 A. Uh-huh. 4 Q. Okay. And then you see that Mr. Kobak 5 and Mr. Giddens are also copied on this e-mail? 6 A. Yes. 7 Q. And that's the Trustee and his 8 counsel, correct? 9 A. That's correct. 10 Q. The first sentence of the e-mail says, 11 "To the group: OCC is seeking to confirm its 12 understanding that the LBI accounts and all 13 positions, cash and securities collateral that 14 are held by OCC in respect of those accounts are 15 intended to be transferred to Barclays and that 16 Barclays is assuming all obligations with 17 respect to those accounts." Do you see that? 18 A. Yes. 19 Q. Do you believe -- are you aware of any 20 recipient of this e-mail responding to this and 21 telling the OCC that Barclays was not to receive 22 the cash and securities collateral held by the 23 OCC in respect of the OCC accounts? 24 A. I am not aware of anybody sending an 25 e-mail back saying that.</p>	<p>1 D. McIsaac 2 Q. You said earlier that the margin at 3 the OCC was of significant value, did you not? 4 A. Yes. 5 Q. Would you have expected any recipient 6 of this e-mail to raise an objection to the 7 OCC's stated intent if they were not of the same 8 understanding as to who would be entitled to the 9 cash and securities collateral held by OCC in 10 respect of the OCC accounts? 11 MR. OXFORD: Objection. Form. 12 A. I believe this is advising the 13 individuals that the OCC is assuming that the 14 assets are being transferred, and in the second 15 paragraph it is saying, "It is our understanding 16 that certain parts of the APA are still being 17 negotiated." 18 So I'm assuming in the interim while 19 they're negotiating the final documents that the 20 OCC wants the -- I'm guessing this is the Asset 21 and Assumption Agreement -- Transfer and 22 Assumption Agreement to be signed. 23 Q. You see at the very beginning of the 24 e-mail it says, "OCC is seeking to confirm its 25 understanding that all cash and securities</p>

Page 238	Page 239
<p>1 D. McIsaac 2 collateral are intended to be transferred to 3 Barclays"; Do you see that? 4 A. Yes. 5 Q. If it's true, as you suggest it may 6 be, that the Purchase Agreement is still being 7 negotiated -- 8 A. I didn't say that. I'm sorry. Mr. 9 McDaniel is saying that. 10 Q. Would you expect when the terms of 11 this transaction were confirmed, that if indeed 12 it was the case that Barclays was not to receive 13 the cash and securities collateral held at the 14 OCC, the Trustee and LBI would have been prudent 15 to inform the OCC of that fact? 16 A. Yes. 17 MR. OXFORD: Objection. Asked and 18 answered. 19 Q. Have you seen any evidence in the 20 record that either the Trustee or LBI's 21 attorneys informed the OCC that Barclays was not 22 intended to receive the cash and securities 23 collateral at the OCC? 24 A. No. I think, as I've discussed 25 before, the Transfer and Assumption Agreement is</p>	<p>1 D. McIsaac 2 a means to allow Barclays to start trading the 3 next day and protecting the OCC. Whatever the 4 agreement was regarding those assets that are 5 being transferred and what payment had to be 6 made for them or not be made for them would I 7 expect to be part of an agreement. 8 Q. Do you agree that if the parties 9 hadn't intended for these assets at the OCC to 10 be transferred to Barclays, it would have been 11 prudent for them to inform the OCC of that? 12 MR. OXFORD: Objection. Form. 13 A. Yes. As I said, it would have been 14 prudent, if they didn't think that all the 15 assets should have been transferred, it would 16 have been prudent to tell the OCC that they were 17 not agreeing to that. 18 Q. And have you seen any evidence in the 19 record in which any party told the OCC that they 20 did not intend that? 21 A. No, I have not seen anything in the 22 record that states that. 23 MS. BLOOMER: I think if you'll give 24 me a few minutes, I might be wrapped up and 25 we can have Amy come in and start the second</p>
Page 240	Page 241
<p>1 D. McIsaac 2 part of the deposition. 3 MR. OXFORD: Okay. Let's go off the 4 record. 5 THE VIDEOGRAPHER: The time is 4:13. 6 This is the end of the tape labeled number 7 4. We're going off the record. 8 (Recess.) 9 (Exhibit 691, Affidavit of Daniel 10 McIsaac, marked for identification, as of 11 this date.) 12 (Exhibit 692, Supplemental Affidavit 13 of Daniel McIsaac, marked for 14 identification, as of this date.) 15 (Exhibit 693, Rebuttal Report of 16 Daniel McIsaac, marked for identification, 17 as of this date.) 18 THE VIDEOGRAPHER: This is the start 19 of tape labeled number 6. The time is 4:45. 20 We're back on the record. 21 EXAMINATION BY 22 MS. NEUHARDT: 23 Q. Good afternoon, Mr. McIsaac. My name 24 is Amy Neuhardt and I'm representing Barclays 25 and I'm here to discuss with you the reports</p>	<p>1 D. McIsaac 2 that I have put in front of you as Exhibits 691, 3 692 and 693. And could you identify those for 4 the record for me? 5 A. 691 is my affidavit that was filed 6 with the original motion. 69 -- 7 Q. Do you mean the original allocation 8 motion? 9 A. Allocation motion. I'm sorry. 10 692 is the Supplemental Affidavit 11 filed with the court on or about February 27, 12 and 693 is the Rebuttal Report. 13 Q. Okay. Very good. Now, in 691 if you 14 could turn to paragraph 5, and in that you say, 15 "Based on my experience in the public and 16 private sectors, I am fully familiar with the 17 SEC rules governing financial responsibility of 18 SEC registered broker-dealers and the protection 19 of customer property and with industry practices 20 regarding the handling of customer property and 21 compliance with SEC Customer Protection Rules." 22 And unless I'm mistaken, which you may 23 take a look, paragraph 2 of your Rebuttal Report 24 contains a very similar statement. Can you just 25 confirm that? It's the last sentence.</p>

Page 242	Page 243
<p>1 D. McIsaac</p> <p>2 A. Uh-huh.</p> <p>3 Q. So are you offering opinions as an</p> <p>4 expert in any substantive area other than what</p> <p>5 you're describing in this sentence that appears</p> <p>6 in 691 and 693?</p> <p>7 A. When you say -- I'm -- if you can</p> <p>8 clarify what that means. I'm not sure what you</p> <p>9 mean by that.</p> <p>10 Q. Sure. Absolutely. In particular, are</p> <p>11 you putting yourself forth as an expert in SIPA</p> <p>12 statutory or regulatory requirements?</p> <p>13 A. No.</p> <p>14 Q. Okay. Are you putting yourself</p> <p>15 forward as an expert on the practices of SIPC</p> <p>16 trustees?</p> <p>17 A. No.</p> <p>18 Q. Okay. Are you putting yourself</p> <p>19 forward as an expert on the Bankruptcy Code?</p> <p>20 A. No.</p> <p>21 Q. All right. Now, when you say you were</p> <p>22 familiar with the SEC rules governing financial</p> <p>23 responsibility of SEC registered broker-dealers</p> <p>24 and the protection of customer property, are you</p> <p>25 purporting to be an expert in the legal</p>	<p>1 D. McIsaac</p> <p>2 interpretation of those rules?</p> <p>3 A. I have spent a good part of 30 years</p> <p>4 in the industry working on the last 20 years of</p> <p>5 the preparation of the -- my two firms weekly.</p> <p>6 I have monthly 3-3 calculations. I'm a licensed</p> <p>7 Fin. Op., Series 27, so I interpret -- I would</p> <p>8 have to review and interpret the rules and the</p> <p>9 interpretations of those rules.</p> <p>10 Q. Okay. Are you a lawyer?</p> <p>11 A. No, I am not.</p> <p>12 Q. So your testimony is based on your</p> <p>13 practice in interpreting 15c3-3, but not based</p> <p>14 on experience as a lawyer doing legal analysis;</p> <p>15 is that correct?</p> <p>16 A. I am -- sorry.</p> <p>17 MR. OXFORD: Objection. Form. You</p> <p>18 can answer.</p> <p>19 A. I'm not a lawyer and most people who</p> <p>20 work on the reserve formula I believe are not</p> <p>21 lawyers.</p> <p>22 Q. Okay. Now, when you say you are</p> <p>23 familiar with industry practices regarding the</p> <p>24 handling of customer property and compliance</p> <p>25 with SEC Customer Protection Rules, are you</p>
Page 244	Page 245
<p>1 D. McIsaac</p> <p>2 purporting to be an expert in the operations and</p> <p>3 processing systems used by Lehman that were fed</p> <p>4 into the reserve calculation?</p> <p>5 MR. OXFORD: Hold on. Objection to</p> <p>6 form. Sorry.</p> <p>7 Q. By reserve calculation, I am referring</p> <p>8 to the calculation required under SEC Rule</p> <p>9 15c3-3. Will you understand that that's what I</p> <p>10 mean when I say "reserve calculation" throughout</p> <p>11 the deposition?</p> <p>12 A. The allocation formula?</p> <p>13 Q. Yes.</p> <p>14 A. Yes.</p> <p>15 MR. OXFORD: Same objection. Do you</p> <p>16 have the question in mind?</p> <p>17 A. No, maybe --</p> <p>18 Q. So when you say you were familiar with</p> <p>19 industry practices regarding the handling of</p> <p>20 customer property and compliance with SEC</p> <p>21 customer rules, are you purporting to be an</p> <p>22 expert in the operations and processing systems</p> <p>23 used by Lehman that were fed into the reserve</p> <p>24 calculation?</p> <p>25 A. When you say an expert in the systems,</p>	<p>1 D. McIsaac</p> <p>2 I am not a systems analyst. I am not a systems</p> <p>3 programmer. I --</p> <p>4 Q. Okay. So you are not familiar with --</p> <p>5 MR. OXFORD: Let him --</p> <p>6 Q. I apologize.</p> <p>7 A. That's all right.</p> <p>8 Q. I realize you weren't through.</p> <p>9 A. I am very familiar with the allocation</p> <p>10 process and what people preparing the report</p> <p>11 will look to see out of the allocation process.</p> <p>12 Q. Okay. So are you familiar with the</p> <p>13 ADP system?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Okay. The ITS system?</p> <p>16 A. No, not necessarily.</p> <p>17 Q. Okay. NTS?</p> <p>18 A. I am familiar with fixed income</p> <p>19 systems.</p> <p>20 Q. Okay. And the RISC, R-I-S-C, system?</p> <p>21 A. I am not intimately familiar with it.</p> <p>22 Q. Okay. Have you ever had any prior</p> <p>23 experience in forensic accounting?</p> <p>24 A. No.</p> <p>25 Q. Okay. Now, are you aware that the</p>

Page 246	Page 247
<p>1 D. McIsaac</p> <p>2 Trustee and Barclays are currently in a dispute</p> <p>3 regarding the interpretation of a contract under</p> <p>4 which Barclays purchased assets from the former</p> <p>5 Lehman Brothers estate?</p> <p>6 A. Yes, I am. I sat here through four</p> <p>7 hours of a deposition on that.</p> <p>8 Q. Yes. I just don't want a foundation</p> <p>9 objection from Neil over there.</p> <p>10 Okay. Are you purporting to offer any</p> <p>11 opinion on the interpretation of the language in</p> <p>12 that contract?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 A. I don't know if you're going to ask me</p> <p>15 a question on it, but I don't -- I don't think</p> <p>16 this allocation motion was part of -- looked</p> <p>17 at -- I might have reviewed that, but it wasn't</p> <p>18 part of reliance.</p> <p>19 Q. Have you been asked by anybody to</p> <p>20 analyze the contract?</p> <p>21 MR. OXFORD: Is your question, because</p> <p>22 as Mr. McIsaac says, we have sat through</p> <p>23 almost five hours of questioning --</p> <p>24 MS. NEUHARDT: A lot.</p> <p>25 MR. OXFORD: -- from your colleague in</p>	<p>1 D. McIsaac</p> <p>2 connection with the Asset Purchase Agreement</p> <p>3 and various other documents. It would be</p> <p>4 clearer for me and perhaps also for the</p> <p>5 witness it will make things a little quicker</p> <p>6 if you could clarify if your questions are</p> <p>7 relating solely to the three affidavits and</p> <p>8 reports that you have premarked.</p> <p>9 MS. NEUHARDT: Yes, they are.</p> <p>10 Q. I am purely asking whether you have</p> <p>11 been asked to interpret the contract as it</p> <p>12 relates to assets in the reserve accounts or</p> <p>13 substitute assets for what would be in the</p> <p>14 reserve account? That doesn't help --</p> <p>15 MR. OXFORD: I still have an objection</p> <p>16 to form, but you can answer if you're able.</p> <p>17 A. I'm not sure where you're going. I</p> <p>18 thought there was only one thing in the</p> <p>19 allocation motion that talked to the contract</p> <p>20 with Barclays, and that's the OCC deposit.</p> <p>21 Q. Okay. Have you examined any other</p> <p>22 part of the contracts other than the portion</p> <p>23 that relates to the OCC margin other than in</p> <p>24 this morning's portion of the deposition?</p> <p>25 A. In relation to?</p>
Page 248	Page 249
<p>1 D. McIsaac</p> <p>2 Q. To your opinion as set forth in the</p> <p>3 three exhibits sitting in front of you?</p> <p>4 A. I don't think I placed reliance on the</p> <p>5 APA to review whether or not the 3-3 was in</p> <p>6 compliance with the rules.</p> <p>7 Q. Okay. Did you place any reliance on</p> <p>8 the Clarification Letter?</p> <p>9 A. Again, I don't know, in relation to</p> <p>10 this, if I placed any reliance on it.</p> <p>11 Q. You don't know if you placed reliance</p> <p>12 on it?</p> <p>13 A. I don't think I placed any reliance on</p> <p>14 that. I was asked to review the 3-3 allocation</p> <p>15 and what could be or compliance issues thereto.</p> <p>16 Q. Okay. If you could turn to the first</p> <p>17 exhibit in -- the first exhibit in the first</p> <p>18 exhibit, which is your resumé, and it should be</p> <p>19 tagged with a purple tag.</p> <p>20 A. Yes.</p> <p>21 Q. This is your resumé, correct?</p> <p>22 A. Yes, it is.</p> <p>23 Q. It says you have a bachelor of science</p> <p>24 in accounting from Lehman College; is that</p> <p>25 correct?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you have any other formal</p> <p>4 education?</p> <p>5 A. No postgraduate. No postgraduate</p> <p>6 education.</p> <p>7 Q. So you did no work toward a degree</p> <p>8 that you then did not receive?</p> <p>9 A. No.</p> <p>10 Q. So you've taken the courses in law?</p> <p>11 A. I've taken the courses that were</p> <p>12 required for my CPA certification.</p> <p>13 Q. Did that include any courses in law?</p> <p>14 A. Yes. Business law I think was a</p> <p>15 requirement.</p> <p>16 Q. Business law, okay. All right, that's</p> <p>17 all I have about your education.</p> <p>18 Now, this shows the most recent</p> <p>19 position as you being at UBS Securities. You do</p> <p>20 not still work at UBS, do you?</p> <p>21 A. No, I left UBS in June.</p> <p>22 Q. In June of 2009?</p> <p>23 A. 9.</p> <p>24 Q. Okay. And why did you leave?</p> <p>25 A. There was downsizing at UBS.</p>

Page 250	Page 251
<p>1 D. McIsaac 2 Q. And where do you currently work? 3 A. Currently today I work for KPMG. 4 Q. And how long have you been at KPMG? 5 A. Three weeks. 6 Q. Three weeks? Okay. What's your 7 position there? 8 A. Director of Regulatory Advisory. 9 Q. Okay. And did you hold any position 10 between UBS and KPMG? 11 A. Between then I was acting as an 12 independent consultant. 13 Q. And was that as independent consultant 14 to the Trustee on this matter? 15 A. That, and I had other clients I was 16 doing work for. 17 Q. Can you tell me the other clients? 18 A. It's confidential, I would think. 19 Q. It's confidential. All right. 20 When did you first begin doing 21 consulting work for the Trustee? 22 A. On or about the middle of July. 23 Q. Did you perform any work for Lehman 24 Brothers Holdings, Inc. as an independent 25 consultant?</p>	<p>1 D. McIsaac 2 A. No. 3 Q. Okay. Did you serve any function for 4 the Trustee other than as an expert witness for 5 this matter in your independent consulting? 6 A. I provided an expert report on the 7 derivatives, and I provided two other -- I think 8 they're called affidavits for other issues 9 regarding customer protection. 10 Q. Do you know if those affidavits were 11 filed in the public record? 12 A. I believe they were, but I don't know. 13 I can't say for sure. 14 Q. Okay. And did you perform any other 15 services for the Trustee? 16 A. From time to time. 17 MR. OXFORD: I'll let you answer that 18 question yes or no, Mr. McIsaac. 19 A. Yes. 20 Q. Okay. I think I know what's coming. 21 Can you describe for me the nature of 22 the services you performed for the Trustee? 23 MR. OXFORD: I'm going to object to 24 the form of that question and instruct you 25 not to answer.</p>
Page 252	Page 253
<p>1 D. McIsaac 2 MS. NEUHARDT: And what's the basis of 3 your instruction? 4 MR. OXFORD: It's privileged. 5 MS. NEUHARDT: Can you describe for me 6 the basis of the privilege? 7 MR. OXFORD: Yes. Mr. McIsaac has 8 been retained as a consultant by the Trustee 9 to provide professional advice. 10 MS. NEUHARDT: Are you representing 11 that none of the other services that he 12 performed for the Trustee relate in any way 13 to his opinions that have been proffered in 14 these three exhibits? 15 MR. OXFORD: That is my understanding. 16 MS. NEUHARDT: That's your 17 representation on the record? 18 MR. OXFORD: That's my best 19 understanding. 20 Q. Okay. Now, other than the positions 21 with KPMG and your independent consulting that 22 we have discussed, are there any other 23 professional positions that you have held in the 24 last 20 years that are not reflected on this 25 resumé?</p>	<p>1 D. McIsaac 2 A. I've been a chair -- well, it's in the 3 resumé. So, no, everything's in the resumé. 4 Q. Now, in your work as an independent 5 consultant, and I'm referring specifically to 6 your work on the expert reports that are in 7 front of you, did you have any staff assisting 8 you? 9 A. No, I did not. 10 Q. Okay. All right. I'm going to start 11 with at UBS, could you explain to me how your 12 position at UBS gave you experience with 13 industry practices regarding the handling of 14 customer property and compliance with SEC 15 customer rules? 16 A. Yes. I was the Fin. Op. for UBS 17 Securities Financial Operational Principal. I 18 signed the Focus Reports. I took all 19 responsibility on the financial information 20 filed with the regulators. I supervised the 21 reserve formula calculation, the net capital 22 calculations, the seg and secured calculations, 23 as well as the filing of the Focus Reports. 24 Q. Okay. And did you ever personally do 25 the reserve calculation?</p>

Page 254	Page 255
<p>1 D. McIsaac</p> <p>2 A. I worked on it as a more junior</p> <p>3 person.</p> <p>4 Q. When you were at UBS?</p> <p>5 A. No. No.</p> <p>6 Q. Was that in one of your prior</p> <p>7 positions?</p> <p>8 A. At Dean Witter I managed a group. I</p> <p>9 also did some work on it from time to time when</p> <p>10 somebody was out.</p> <p>11 Q. At Dean Witter that was not a part of</p> <p>12 your regular duties? You worked on it if</p> <p>13 someone was out?</p> <p>14 A. I supervised it. It came under my --</p> <p>15 I managed a group that did it, the people that</p> <p>16 did it.</p> <p>17 Q. Okay. You mentioned that you hold a</p> <p>18 Series 27 license. Do you hold any other</p> <p>19 professional licenses?</p> <p>20 A. No.</p> <p>21 Q. Have you in the past?</p> <p>22 A. Oh, sorry. I take that back. A CPA</p> <p>23 license.</p> <p>24 Q. I was just going to ask you.</p> <p>25 A. No. I was thinking when you say that</p>	<p>1 D. McIsaac</p> <p>2 along the lines of other series, but, yes, CPA.</p> <p>3 Q. Are you in any professional</p> <p>4 organizations?</p> <p>5 A. I'm a member of the AICPA, the New</p> <p>6 York State Society of CPAs. I'm a member of the</p> <p>7 Financial Management Division of SIFMA, the</p> <p>8 Securities Industry and Financial Markets</p> <p>9 Association. I'm past president of the</p> <p>10 Financial Markets Division, the Financial</p> <p>11 Management Division I think it's called, and up</p> <p>12 until three weeks ago when I took the job at KPM</p> <p>13 I chaired the SIFMA Capital Committee.</p> <p>14 Q. Did the AICPA study in any way SEC</p> <p>15 Rule 15c3-3?</p> <p>16 A. The AICPA has issued an audit guide</p> <p>17 for the auditing of securities broker-dealers.</p> <p>18 Q. Did you have any involvement in that?</p> <p>19 A. I might have had some involvement of</p> <p>20 it when I was at Deloitte in a past life of</p> <p>21 reviewing it possibly, but that was many</p> <p>22 editions ago.</p> <p>23 Q. Okay. And did the New York State</p> <p>24 Society for CPAs have any involvement in</p> <p>25 interpreting Rule 15c3-3?</p>
Page 256	Page 257
<p>1 D. McIsaac</p> <p>2 A. No.</p> <p>3 Q. Okay. And the same question for</p> <p>4 SIFMA?</p> <p>5 A. Yes, the capital committee is</p> <p>6 intimately involved in the capital rules and</p> <p>7 Customer Protection Rules.</p> <p>8 Q. Okay. Have you ever served as an</p> <p>9 expert witness before?</p> <p>10 A. No. Four hours ago.</p> <p>11 Q. Other than in this matter?</p> <p>12 A. No.</p> <p>13 Q. Very good. Okay. Now, as an expert</p> <p>14 relating to the reports that are in front of you</p> <p>15 right now, not what you discussed with Ms.</p> <p>16 Bloomer this morning, how many hours of time</p> <p>17 have you billed to the Trustee in putting</p> <p>18 together your opinions here?</p> <p>19 A. On the two of these?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I'd have to go back, but it was</p> <p>22 hundreds.</p> <p>23 Q. Can you give me a range?</p> <p>24 A. Maybe three to four hundred.</p> <p>25 Q. Do you know how much you have billed?</p>	<p>1 D. McIsaac</p> <p>2 A. No, I don't.</p> <p>3 Q. Have you ever written any</p> <p>4 publications?</p> <p>5 A. No.</p> <p>6 Q. Okay. In the -- you say you've spent</p> <p>7 hundreds of hours on these two reports. Do you</p> <p>8 have a sense of how much was devoted to the</p> <p>9 original affidavit of October 5?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 You can answer if you're able.</p> <p>12 A. Maybe a couple hundred. I don't -- I</p> <p>13 don't recall how much exactly. Probably a</p> <p>14 little bit more than 200, but I don't remember.</p> <p>15 MS. NEUHARDT: I think under the</p> <p>16 stipulation we're entitled to that</p> <p>17 information, so perhaps you can provide that</p> <p>18 to us later today or tomorrow.</p> <p>19 MR. OXFORD: I don't think I can get</p> <p>20 it to you later today, but I will certainly</p> <p>21 take your request under advisement.</p> <p>22 MS. NEUHARDT: Okay.</p> <p>23 Q. Have you ever been involved in a SIPC</p> <p>24 liquidation before?</p> <p>25 A. No.</p>

Page 258	Page 259
<p>1 D. McIsaac</p> <p>2 Q. Have you ever been involved in</p> <p>3 performing 15c3-3 calculations at the time of a</p> <p>4 merger or an acquisition?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Could you tell me when that</p> <p>7 would be?</p> <p>8 A. UBS merged with SBC on or about June</p> <p>9 29, 1998. There was a merger with various</p> <p>10 acquisitions of various assets of PaineWebber</p> <p>11 that were included as part of the acquisition of</p> <p>12 UBS Securities acquired some of the assets, and</p> <p>13 that was somewhere around November of 2000.</p> <p>14 Q. Okay.</p> <p>15 A. We at UBS purchased the prime</p> <p>16 brokerage business from ABN Amro I want to say</p> <p>17 it's around 2003, but I'm fuzzy on the time.</p> <p>18 We purchased a futures business, but</p> <p>19 that didn't have anything to do with 3-3, and</p> <p>20 probably some other asset purchases or smaller</p> <p>21 type purchase of assets or businesses along the</p> <p>22 way.</p> <p>23 Q. Okay. All right. Now we're going to</p> <p>24 get into the substance of your opinions. Under</p> <p>25 SEC Rule 15c3-3, prior to filing for</p>	<p>1 D. McIsaac</p> <p>2 liquidation, are the assets in a reserve account</p> <p>3 considered the property of the broker-dealer or</p> <p>4 the property of customers?</p> <p>5 A. The assets have to be the property of</p> <p>6 the broker-dealer because they're their assets.</p> <p>7 Q. Okay. So would customer property as</p> <p>8 defined under SEC Rule 15c3-3 ever be put in the</p> <p>9 reserve account?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 You can answer.</p> <p>12 A. Customer's property that they own,</p> <p>13 such as securities, would be included in the</p> <p>14 reserve formula based on an allocation of those</p> <p>15 assets and the use of those assets.</p> <p>16 Q. But would the securities be placed in</p> <p>17 the reserve account?</p> <p>18 A. In the 15c3 reserve account?</p> <p>19 Q. Correct.</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you know how many accounts</p> <p>22 LBI had that comprised its reserve account under</p> <p>23 SEC Rule 15c3?</p> <p>24 A. You'll have to define what you mean by</p> <p>25 "accounts." I don't --</p>
Page 260	Page 261
<p>1 D. McIsaac</p> <p>2 Q. Well, they -- are you aware that there</p> <p>3 was a bank account at Wells Fargo that was used</p> <p>4 for part of the reserve account?</p> <p>5 A. There was a, I believe, a reserve</p> <p>6 formula account, an account for the benefit of</p> <p>7 customers at Wells Fargo.</p> <p>8 Q. Correct. Do you know how many such</p> <p>9 accounts LBI held?</p> <p>10 A. If my memory is correct, it was three</p> <p>11 or four, I believe.</p> <p>12 Q. Okay. And do you remember what banks</p> <p>13 those were at other than Wells Fargo, which we</p> <p>14 have discussed?</p> <p>15 A. I believe there might have been</p> <p>16 something at JPMorgan, but I don't remember</p> <p>17 exactly, and I don't remember the other two.</p> <p>18 Q. What was the total amount as of</p> <p>19 September 19, 2008 that was in LBI's reserve</p> <p>20 accounts?</p> <p>21 A. I'd have to look in my report for the</p> <p>22 exact number, but I believe it was about a</p> <p>23 billion-17 -- a billion-760 million, something</p> <p>24 on that nature.</p> <p>25 Q. Could you show me in your report where</p>	<p>1 D. McIsaac</p> <p>2 you got that number?</p> <p>3 MR. OXFORD: Amy, are you asking a</p> <p>4 question where he got it or where it is in</p> <p>5 the report?</p> <p>6 MS. NEUHARDT: It's the source, what</p> <p>7 his source is for the -- his testimony that</p> <p>8 that is the total amount that was locked up</p> <p>9 as of that date.</p> <p>10 MR. OXFORD: Okay.</p> <p>11 A. So not where it is in here?</p> <p>12 Q. Hum?</p> <p>13 A. Not where --</p> <p>14 Q. Well --</p> <p>15 A. I'm confused.</p> <p>16 Q. -- if it's not in there, I would like</p> <p>17 to know what it is that you did rely upon. And</p> <p>18 we do have materials that your counsel -- LBI's</p> <p>19 counsel produced that you purported to rely on.</p> <p>20 And you can check in there if you want, but if</p> <p>21 it's attached to your report, that would be</p> <p>22 easier.</p> <p>23 A. You'll have to give me a minute to go</p> <p>24 through it. I don't know if it's ...</p> <p>25 Q. While you're looking, I can ask the</p>

Page 262	Page 263
<p>1 D. McIsaac 2 question, did you look at the bank account 3 statements for each of the three or four 4 accounts that we discussed earlier? 5 A. No. The Trustee's financial 6 professionals provided me with the schedule of 7 what was in the accounts. 8 Q. And by "financial professionals," who 9 are you referring to? 10 A. I believe it came from legal counsel. 11 Q. From legal counsel. It didn't come 12 from Deloitte? 13 A. It might come from Deloitte 14 eventually, but it was given to me by legal 15 counsel. 16 Q. And did you do any independent 17 investigation of the correctness of the 18 materials supplied to you by legal counsel? 19 A. No. 20 Q. You know what, why don't we have you 21 look for that on a break and go on in an effort 22 to -- 23 A. Sure. 24 Q. -- save time. 25 Under SEC Rule 15c3-3, if there is an</p>	<p>1 D. McIsaac 2 excess in the reserve account, is that held for 3 the exclusive benefit of customers? 4 A. Everything in that account is held for 5 the exclusive benefit of customers. 6 Q. So is it your testimony that even 7 amounts that are not required to be held there 8 are for the benefit of customers? 9 MR. OXFORD: Objection. Asked and 10 answered. You can answer again. 11 A. If it's held in there, it's for the 12 exclusive benefit of customers. 13 Q. Okay. Is a broker-dealer allowed to 14 withdraw excess? 15 MR. OXFORD: Objection. You can 16 answer. 17 A. A broker-dealer can make withdrawals 18 and deposits based on calculations. 19 Q. Okay. And is there any requirement 20 that a broker-dealer receive SEC approval before 21 making a withdrawal of excess? 22 A. I do not believe there's any 23 requirement to get the approval of the SEC in 24 the normal course. 25 Q. Okay. Now, you qualified your last</p>
Page 264	Page 265
<p>1 D. McIsaac 2 answer by saying you did not believe there was a 3 requirement to get SEC approval in the normal 4 course? 5 A. Correct. 6 Q. Do you believe there's a requirement 7 to get SEC approval at any other time? 8 A. Well, I would assume if you're in 9 liquidation, you can't move moneys out of the 10 account without the approval of the S.E.C., but 11 I don't know that for a fact. 12 Q. Okay. Are you basing your assumption 13 on anything in SEC Rule 15c3-3? 14 A. I don't believe anything I've seen 15 there. What I've seen in the rules is basically 16 you have to do a withdrawal -- a calculation 17 before you can do a withdrawal. 18 Q. Okay. In your rebuttal report, 19 paragraph 13, you state that the -- I'll give 20 you a moment to get to that. In the second 21 sentence you state, "The only relevant point in 22 time" -- 23 A. Excuse me. Excuse me. What 24 paragraph? 25 Q. 13. I'm sorry.</p>	<p>1 D. McIsaac 2 A. Page 13. 3 Q. No, paragraph 13, page 6. 4 A. Oh, I'm sorry. I thought you said 5 page 13. 6 Q. No, my apologies. 7 A. Okay. 8 Q. Okay. Second sentence says, "The only 9 relevant point in time for the purpose of 10 determining the accuracy of LBI's reserve 11 calculation as of September 19, 2008, is 12 September 19, 2008." 13 Why -- why do you believe that 14 September 19, 2008 is the relevant date? 15 A. That's the -- that's when the 16 calculation is as of. So anything that has 17 happened as of that date or known as of that 18 date is what goes into the formula. 19 Q. Why -- well, were you told to do a 20 calculation as of September 19, 2008, or did you 21 independently decide that that was the relevant 22 date for a calculation? 23 MR. OXFORD: Objection to the form. 24 That misstates the facts and the evidence, 25 and I think you're misreading his reports.</p>

Page 266	Page 267
<p>1 D. McIsaac 2 You can answer if you can. 3 A. I believe the 19th of September 2008 4 was the last reserve requirement prepared by 5 Lehman prior to entering into SIPC protection. 6 Q. Okay. Do you know the date that LBI 7 entered into SIPC protection? 8 A. I believe it was sometime on or about 9 the 19th of September. 10 Q. Okay. Do you know if they had 11 performed a calculation on that date prior to 12 entering into SIPC liquidation? 13 MR. OXFORD: Objection to form. 14 A. I have not seen any as of September 15 18, I don't believe. 16 Q. Have you seen any as of the morning of 17 September 19? 18 A. I'm sorry, as of the morning of 19 September 19th? As of what period of time? 20 Q. Prior to entering into liquidation on 21 the day of the 19th? 22 A. Based on what period? Based on what 23 ending period? 24 Q. Any ending period. 25 A. You can only do it at the end of a</p>	<p>1 D. McIsaac 2 day. You can't do it in the middle of a day. 3 Q. Okay. So then wasn't the last 4 calculation actually performed by LBI prior to 5 entering into liquidation done on the 17th? 6 A. I don't think so. I thought they were 7 required to do a calculation as of the close of 8 business on the 19th. 9 Q. Even if they were no longer in 10 business? 11 A. I don't know what the whole rule is 12 around SIPC, but I believe they were required to 13 do a calculation as of the close of business the 14 19th because that was the last day of business. 15 Q. Could you show me in -- we can get you 16 Rule 15c3-3. We're going to mark that as 17 Exhibit 694. 18 (Exhibit 694, Rule 15c3-3, marked for 19 identification, as of this date.) 20 Q. I've put before you SEC Rule 15c3-3. 21 Could you tell me where in Rule 15c3-3 LBI would 22 have been required to do a reserve calculation 23 on the 19th despite entering into liquidation on 24 that day? 25 MR. OXFORD: Objection. Form.</p>
Page 268	Page 269
<p>1 D. McIsaac 2 Misstates the witness's testimony. 3 You can answer. 4 A. I don't think there's anything in Rule 5 15c3-3 that says when anybody is supposed to do 6 a calculation as opposed to the 19th. I believe 7 it says that you do calculations as of Friday 8 and the last business day of the month. 9 Q. Okay. 10 A. That was their last business day. 11 Q. Is it your position that 15c3-3 12 continues to apply after entering into SIPC 13 liquidation? 14 A. I would think you would have to do a 15 final calc if it was a Friday close of business 16 to account for all your assets in this process. 17 Q. And the basis for that belief is? 18 A. The last day of business was a Friday. 19 I don't know if you would have to do it if the 20 last day of business was a Wednesday, but their 21 last day of business was a Friday. 22 Q. So it's your position that even though 23 at the end of the day of business on that Friday 24 they were in liquidation, they still would have 25 had to do a 15c3-3 calculation?</p>	<p>1 D. McIsaac 2 A. I believe so. That's my opinion. 3 Q. Okay. And that is based on? 4 A. You're supposed to do calculations as 5 of Friday or month end, and that was a Friday of 6 business. 7 Q. So you have no other basis for your 8 opinion that a 15c3-3 calculation would have 9 been required even though they had entered into 10 liquidation on that day? 11 A. I believe the SEC required a 3-3 12 calculation to be done, but I don't know if I 13 can point to anything that says that. 14 Q. When you say the SEC required it, do 15 you mean by rule or are you talking about events 16 as of that day, communications that day? 17 A. I thought by rule they required it as 18 of the close of business on Friday. I think 19 they -- did they go into -- I believe they went 20 into liquidation after the markets closed, which 21 would be the close of their business day. 22 Q. And if that were not the case, would 23 that change your opinion in any way? 24 A. Then I would leave it up to the 25 regulators to determine if a calculation had to</p>

Page 270	Page 271
<p>1 D. McIsaac 2 be done at that point in time. 3 Q. So you don't have an opinion, then, if 4 the liquidation started prior to the close of 5 business on Friday? 6 A. If the -- 7 MR. OXFORD: Objection. Form. 8 You can answer. 9 A. If the liquidation was at 1 o'clock -- 10 9 o'clock in the morning, I might have a 11 different opinion, but it was I believe after 12 the close of business. I think it was finally 13 approved sometime Saturday morning. 14 Q. Okay. 15 A. And I'm assuming -- 16 Q. I'm trying to make sure you've 17 answered my question. I don't think we've 18 established what time it was. 19 If it did happen prior to the close of 20 business, does that change your opinion? 21 MR. OXFORD: Objection. Form. 22 You can answer. 23 A. I don't know. I don't have an opinion 24 on it. 25 Q. Okay. Now, under -- for a moment</p>	<p>1 D. McIsaac 2 we'll assume that the 19th is the appropriate 3 date, and I believe you said that under the 4 SEC -- well, rather than recharacterize your 5 testimony, how often does an operating 6 broker-dealer have to do its reserve 7 calculation? 8 A. It's based on what type of 9 broker-dealer it is. One of Lehman's stature 10 had to do one weekly and as of month end. 11 Q. And you said normally it was done on 12 Friday afternoons, correct? 13 A. As of close of business Friday and as 14 of month end. 15 Q. Okay. Now, if a calculation done on 16 the -- done as of the close of business on 17 Friday showed a shortfall, at what time would 18 the broker-dealer be required to make up the 19 shortfall? 20 A. 10 A.M. the second business day 21 following the day of closing. So on a Friday, 22 as long as Monday was a business day, 10 o'clock 23 Tuesday. 24 Q. Okay. And that's under Rule 15c3-3 as 25 well?</p>
Page 272	Page 273
<p>1 D. McIsaac 2 A. Yes. 3 Q. Now, in this case, Lehman was no 4 longer operating as of 10 A.M. the following 5 Tuesday morning, correct? 6 A. I believe that's the case. 7 Q. So as of Friday, the 19th, it would 8 not have had an obligation to actually deposit a 9 shortfall into the account? 10 A. I believe -- 11 MR. OXFORD: Objection to form. 12 You can answer. 13 A. I believe Lehman was still a 14 broker-dealer and had not issued a BDW as of 15 that point in time. 16 Q. I'm sorry, what is a BDW? 17 A. Withdrawal as a broker-dealer. 18 Q. Okay. So is it your testimony that 19 even after filing for liquidation LBI was an 20 operating broker-dealer? 21 A. No. I'm saying they didn't file a BDW 22 and still would have been, I think, required to 23 make a deposit on Tuesday morning if they had to 24 add to their deposit. 25 Q. Despite the fact that a Trustee had</p>	<p>1 D. McIsaac 2 been appointed and was running the operations? 3 A. (Witness nods.) 4 Yes, I'm sorry. 5 Q. You do need to answer. 6 A. I know that. 7 Q. Could you show me or could you tell me 8 what the source of your opinion on that is? 9 A. I don't think there's anything in the 10 literature that says that. I don't think 11 there's anything in the literature that points 12 to a broker-dealer going out of business on a 13 Friday and whether or not it has to make its 14 deposit on Tuesday. 15 Q. So you're not basing your opinion on 16 anything? 17 A. Just -- 18 MR. OXFORD: Objection. Form. It's 19 not what the witness said. 20 But you can answer. 21 A. Practice, common practice, and I would 22 think they would do their last computation. 23 Q. You say common practice. How often 24 have you been involved in a broker-dealer that 25 has gone into liquidation?</p>

Page 274	Page 275
<p>1 D. McIsaac</p> <p>2 A. Never.</p> <p>3 Q. Okay. Let's turn to the discussion of</p> <p>4 FID accounts, and in your original report that</p> <p>5 was at paragraphs -- I didn't put it down</p> <p>6 here -- it starts on page 13 of your original</p> <p>7 report. It's relating to Fixed Income Division</p> <p>8 prime broker clients that are being referred to</p> <p>9 as FID accounts?</p> <p>10 A. That's correct.</p> <p>11 Q. In your original report you stated</p> <p>12 that securities had been liquidated by Chase, is</p> <p>13 that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And you decided that was an error for</p> <p>16 your rebuttal report; is that correct?</p> <p>17 A. No, for my additional affidavit that</p> <p>18 was put in.</p> <p>19 Q. Okay. I apologize. But your opinion</p> <p>20 on that has changed?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, from where did you get the</p> <p>23 number of 891 million as being the -- yes, as</p> <p>24 being the relevant number? And for reference,</p> <p>25 that would be in paragraph 35 of your original</p>	<p>1 D. McIsaac</p> <p>2 affidavit.</p> <p>3 A. That's a combination of the 630</p> <p>4 million of assets and the 281 million -- \$258</p> <p>5 million of the cash.</p> <p>6 Q. Okay. Well, I'm not seeing citations</p> <p>7 for either the 630 million number or the 258</p> <p>8 million number. So where did you get those</p> <p>9 numbers?</p> <p>10 A. They were provided to me by the</p> <p>11 Trustee's financial advisor.</p> <p>12 Q. Did you do any independent</p> <p>13 investigation of the accuracy of those numbers?</p> <p>14 A. I reviewed some documents that would</p> <p>15 have shown the numbers there, would have shown</p> <p>16 the accounts with the balances in them and the</p> <p>17 asset value.</p> <p>18 Q. Are those documents attached to your</p> <p>19 affidavit?</p> <p>20 A. I don't know if they are or not. I</p> <p>21 don't think so.</p> <p>22 Q. Did you speak to anybody about the</p> <p>23 accuracy of those numbers?</p> <p>24 A. The Trustee and their financial</p> <p>25 advisors.</p>
Page 276	Page 277
<p>1 D. McIsaac</p> <p>2 Q. By "financial advisors" are you</p> <p>3 referring to legal counsel again?</p> <p>4 A. It would have been legal counsel</p> <p>5 and/or their financial advisors, Deloitte.</p> <p>6 Q. Deloitte. Can you tell me who you</p> <p>7 spoke to at Deloitte?</p> <p>8 A. Chris Harris and Marlo Karp.</p> <p>9 I'm sorry, I didn't know if that was</p> <p>10 privileged.</p> <p>11 MR. OXFORD: If I might, let me</p> <p>12 perhaps make this go a little more smoothly.</p> <p>13 To the extent, Mr. McIsaac, you relied upon</p> <p>14 advice from Deloitte -- or, not advice, you</p> <p>15 relied on information as a source of the</p> <p>16 facts upon which you base your opinion</p> <p>17 whether in your original affidavit or</p> <p>18 supplemental affidavit or your rebuttal</p> <p>19 report, then I think it's fine for you to</p> <p>20 answer those questions.</p> <p>21 To the extent Ms. Neuhardt's questions</p> <p>22 call for discussions with Deloitte or any</p> <p>23 other person that you did not rely on as a</p> <p>24 source of information for the opinions</p> <p>25 expressed in these affidavits and reports,</p>	<p>1 D. McIsaac</p> <p>2 then I will instruct you not to answer that</p> <p>3 question.</p> <p>4 THE WITNESS: Okay. Thank you.</p> <p>5 Q. I'm trying to find out the underlying</p> <p>6 source of the facts underneath your report.</p> <p>7 A. It would have been either Chris Harris</p> <p>8 or Marlo Karp.</p> <p>9 Q. Did you speak to any employees of the</p> <p>10 Trustee?</p> <p>11 A. No, I did not. Well, employees of the</p> <p>12 Trustee? Legal counsel?</p> <p>13 Q. No.</p> <p>14 MR. OXFORD: Maybe we can clear things</p> <p>15 up. Does your question, Amy, go to the --</p> <p>16 MS. NEUHARDT: I'm going to the TSA</p> <p>17 employees, basically.</p> <p>18 MR. OXFORD: Okay. Because that's</p> <p>19 different than they're not employees of the</p> <p>20 trustee.</p> <p>21 MS. NEUHARDT: But they're performing</p> <p>22 services for him.</p> <p>23 MR. OXFORD: Sure. Maybe we can ask</p> <p>24 this again and make sure Mr. McIsaac</p> <p>25 understands the question.</p>

Page 278	Page 279
<p>1 D. McIsaac</p> <p>2 Q. Are you aware that there are persons</p> <p>3 who are normally employed by Barclays who work</p> <p>4 entirely at the direction of the Trustee?</p> <p>5 MR. OXFORD: Objection.</p> <p>6 A. I'm aware that there are employees of</p> <p>7 Barclays doing work under a TSA. I don't know</p> <p>8 what they're doing or who they are.</p> <p>9 Q. When you say "TSA," what are you</p> <p>10 referring to?</p> <p>11 A. Some kind of transfer services</p> <p>12 agreement I believe is what it's call in the</p> <p>13 industry.</p> <p>14 Q. Do you understand that those employees</p> <p>15 are working for the Trustee?</p> <p>16 A. I don't know who they're working for.</p> <p>17 Q. Okay. Did you speak to any of those</p> <p>18 individuals in relation to the FID accounts?</p> <p>19 A. No.</p> <p>20 Q. Did you speak to any of those</p> <p>21 individuals in relation to anything in your</p> <p>22 reports?</p> <p>23 A. No.</p> <p>24 Q. How did you determine that the \$891</p> <p>25 million were customer assets?</p>	<p>1 D. McIsaac</p> <p>2 A. They were assets in the customer</p> <p>3 accounts that went -- that went into a -- an</p> <p>4 account at Chase designated for the benefit of</p> <p>5 customers.</p> <p>6 Q. What I'm trying to understand is what</p> <p>7 the source is for your statement that they were</p> <p>8 assets in the customer accounts.</p> <p>9 A. I received a document that listed the</p> <p>10 accounts and the account -- the accounts and the</p> <p>11 money, monetary value and the security market</p> <p>12 value in those accounts.</p> <p>13 Q. Did you do any independent</p> <p>14 investigation of the accuracy of that document?</p> <p>15 A. No, I did not. I believe I reviewed</p> <p>16 the stipulation agreement that might have also</p> <p>17 included information on those accounts.</p> <p>18 Q. Is that stipulation agreement attached</p> <p>19 to your report?</p> <p>20 A. I don't believe it is.</p> <p>21 Q. Sorry?</p> <p>22 A. No. No.</p> <p>23 MR. OXFORD: Just to move this along,</p> <p>24 Amy, are you referring to any report or a</p> <p>25 specific report?</p>
Page 280	Page 281
<p>1 D. McIsaac</p> <p>2 MS. NEUHARDT: He said that there's a</p> <p>3 document he looked at that helped him</p> <p>4 determine whether or not the assets that he</p> <p>5 described in his report as FID assets --</p> <p>6 that he describes as customer assets, he</p> <p>7 said he looked at a document and that told</p> <p>8 him they were customer assets. And then I</p> <p>9 asked if he did any independent</p> <p>10 investigation, and he first said no, but</p> <p>11 then he said he may have looked at a</p> <p>12 stipulation, and I asked whether or not he</p> <p>13 attached that in his report.</p> <p>14 MR. OXFORD: Okay. Just for ease, I</p> <p>15 can represent that it's been produced to you</p> <p>16 and I believe it actually may be attached to</p> <p>17 his report, but I'll --</p> <p>18 A. Yes, you say reports. I'm not sure</p> <p>19 which report. I don't think it's in the --</p> <p>20 Q. When I say report, either any of the</p> <p>21 three reports sitting in front of you -- I guess</p> <p>22 it's two reports and one supplemental affidavit.</p> <p>23 And what was your source for stating</p> <p>24 that these particular assets were seized?</p> <p>25 A. Chase took control of the assets and</p>	<p>1 D. McIsaac</p> <p>2 did not return them to the Trustee.</p> <p>3 Q. What's your source for that?</p> <p>4 A. The documents that were provided to me</p> <p>5 by the financial.</p> <p>6 Q. On this one I'm going to need you to</p> <p>7 show me which documents. If you could look at</p> <p>8 your report and show me which documents you're</p> <p>9 using to rely on for the prospect that they were</p> <p>10 seized. I understand, but I need you to</p> <p>11 identify what you're relying on for that. So --</p> <p>12 A. I have a list of assets. I don't</p> <p>13 believe I have any -- anything -- I don't think</p> <p>14 it's in my documents. I can look for you to see</p> <p>15 in the extra documents if we provided anything</p> <p>16 from Chase showing that they were moved out of</p> <p>17 Chase's account. I believe somewhere in here we</p> <p>18 have the accounts showing zero balances in them.</p> <p>19 Q. Do you know what day they were seized</p> <p>20 if in fact they were seized?</p> <p>21 A. Chase, from my understanding, on or</p> <p>22 about the 18th of September --</p> <p>23 Q. On the 18th?</p> <p>24 A. I'm not finished.</p> <p>25 -- shut off access to Lehman to have</p>

Page 282	Page 283
<p>1 D. McIsaac 2 access to the accounts. Somewhere along that 3 period of time, the assets were taken out of the 4 accounts of Lehman. 5 Q. So when you say shut off access, 6 you're referring to shutting off electronic 7 ability to monitor -- 8 A. Yes. 9 Q. -- the accounts? 10 A. The screens were shut off. 11 Q. Are you equating that to seizure? 12 A. No. I'm just saying that at that 13 point in time, LBI was not aware of what was in 14 the accounts. 15 Q. Okay. But do you know when the assets 16 were actually seized? 17 A. I believe the reports that came from 18 Chase, and I'm looking for them in here because 19 I believe they're in here, showed that, as of 20 the 19th, they were removed from the accounts. 21 Q. Do you know if it was before or after 22 LBI filed for liquidation -- sorry, filed for 23 SIPC protection? 24 A. I don't believe Chase put a time stamp 25 on when they removed them out of the accounts.</p>	<p>1 D. McIsaac 2 Q. So you don't know one way or the 3 other? 4 A. I'm not sure what the relevance would 5 be of that if they had no access to those assets 6 as of the 19th. 7 Q. Well, again, are you equating the 8 inability to monitor the accounts with seizure? 9 A. No, I'm saying that they didn't know 10 if they had them or not had them at the 19th 11 because they had no access to their accounts. 12 Q. Are you saying that the inability to 13 monitor alone would make it no longer a good 14 control location? 15 A. No, I just said that they wouldn't 16 have known at that point in time if they were in 17 the accounts or not. 18 Q. So the mere fact that they could not 19 monitor would not have turned those accounts 20 into a -- strike that. 21 MR. OXFORD: And Amy, just on the 22 seize question, maybe we could add that to 23 the list of things you want Mr. McIsaac to 24 look at at a break and it'll speed things up 25 a little bit.</p>
Page 284	Page 285
<p>1 D. McIsaac 2 MS. NEUHARDT: Uh-huh. 3 Q. Is electronic access required to be a 4 good control location under 15c3-3? 5 A. No. 6 Q. Okay. So it's the seizure that is 7 critical to your opinion on this? 8 A. Yes. 9 Q. But you do not know at what time on 10 the 19th these assets were seized? 11 A. No, I do not. 12 Q. Okay. Now, what are the requirements 13 of a good control location under 15c3-3? 14 A. You should have a letter from the 15 bank. 16 Q. A "no lien letter"? 17 A. Stating they have no liens on those 18 assets. 19 Q. Are there any other requirements? 20 A. I believe that the language in the 21 letter talks to no lien, except for payment of 22 certain fees and that. 23 Q. Now, do you know if there was a "no 24 lien letter" from Chase with regards to these 25 accounts?</p>	<p>1 D. McIsaac 2 A. I believe there were "no lien letters" 3 from Chase with these accounts. 4 Q. Were they revoked on or before the 5 19th? 6 A. I believe there was certain ambiguity 7 on whether or not those accounts were being used 8 by Chase for credit purposes or reviewing the 9 equity of LBI at points in time throughout the 10 year. 11 Q. I don't think that answers my 12 question. Do you know if the "no lien letters" 13 were revoked on or before the 19th? 14 A. I do not know if they were revoked 15 before. 16 Q. Okay. Now, you refer in your report 17 regarding the FID assets to an overdraft notice; 18 is that correct? 19 A. Which report are we talking about now? 20 Q. Both of them, actually. I'm still 21 just talking about the FID reports. 22 A. Uh-huh. 23 Q. Did you -- did you review the 24 overdraft notice? 25 A. I've seen documentation that showed</p>

Page 286	Page 287
<p>1 D. McIsaac 2 that it was an overdraft at Chase. 3 Q. Did you do any investigation into -- 4 did you do any investigation into whether or not 5 the notice was properly issued? 6 A. No. 7 Q. Okay. And did you inquire -- 8 A. I -- 9 Q. Sorry? 10 A. I said, no, I don't know what notice 11 of properly issued would be in an overdraft 12 account. Usually you would get a statement from 13 the bank or you would see it online. I don't 14 know if that constitutes a notice. 15 Q. Did you do any investigation into 16 whether or not Chase had acknowledged to Lehman 17 on the 19th that the notice was improperly 18 issued? 19 A. What notice now? 20 Q. You told me you reviewed an overdraft 21 notice. 22 A. And did Chase say that it was 23 improperly issued? No. 24 Q. I'm asking if you investigated whether 25 or not that occurred?</p>	<p>1 D. McIsaac 2 A. I did not. 3 Q. Okay. If that in fact occurred, would 4 that change your opinion in any way? 5 MR. OXFORD: Objection to the form. 6 Assumes facts not in evidence. 7 MS. NEUHARDT: I'm sorry, I couldn't 8 hear you. 9 MR. OXFORD: You can answer. 10 A. If Chase sent another report to Lehman 11 at that time saying we originally told you you 12 had an overdraft of 20 billion, we were wrong, 13 you have cash of 10 billion, yes, that would 14 have an impact on what I thought. If that's 15 what your question was. 16 Q. That's not my question. My question 17 is whether if Chase informed people at Lehman 18 that the notice was issued as a mistake, would 19 that change your opinion? 20 MR. OXFORD: Same objection. 21 A. If they said that -- if they gave 22 notice that there was no overdraft and the 23 assets weren't used to secure the overdraft, 24 yes, it would change my opinion. 25 Q. Did you make any effort to determine</p>
Page 288	Page 289
<p>1 D. McIsaac 2 whether or not LBI actually attempted to 3 withdraw any money from the Chase account on 4 Friday, September 19? 5 A. No, I did not. 6 Q. Did you make any efforts to determine 7 whether or not LBI actually attempted to 8 withdraw any securities from the Chase account 9 as of September 19? 10 A. As I'm aware, the screens were shut 11 down, so I don't know how they would have done 12 that without electronically notifying, unless 13 they would have done it via overnight letting 14 Chase know what deliveries and receipts to make, 15 but I did not do any inquiries into that. 16 Q. Are you saying that telephone 17 communications no longer work? 18 A. I don't know if anybody made a 19 telephone communication to them. I know the 20 screens were down and that's the normal mode of 21 moving securities. 22 Q. So you don't actually know whether or 23 not LBI could have had access to that -- to the 24 cash and securities in the Chase accounts on 25 September 19, 2008?</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection to form. 3 A. I've been informed that the screens 4 were shut down. So having access to it other 5 than via the screens, I'm not sure how they 6 would have it other than maybe verbal 7 discussions with Chase. 8 Q. The mere fact that the screens were 9 shut down would not substantively affect their 10 ability to withdraw money; is that correct? 11 MR. OXFORD: Objection. Form. 12 A. I assume they could send instructions 13 to Chase to do it, and if Chase so desired, they 14 could follow that. 15 Q. Okay. If Chase in fact actually 16 seized assets on the 19th, would that have 17 affected the reserve calculation done by LBI on 18 the 17th? 19 A. If there was ambiguity or if the "no 20 lien" language for those accounts was not in 21 force, then yes, that would have affected any 22 other calculation done at that point in time. 23 Q. Have you seen any evidence that the 24 "no lien letter" was not enforced as of the 25 17th?</p>

Page 290	Page 291
<p>1 D. McIsaac</p> <p>2 A. I have seen nothing that said they --</p> <p>3 it was not enforced at that time.</p> <p>4 Q. Would your answer be the same as of</p> <p>5 the 12th?</p> <p>6 A. The same. I have seen nothing before</p> <p>7 that time.</p> <p>8 Q. Okay. Now, if there were -- if these</p> <p>9 assets were seized on the 19th and it did cause</p> <p>10 a need to adjust the amount in the reserve</p> <p>11 account, at what time -- when would that deposit</p> <p>12 be required?</p> <p>13 A. I believe I answered that before. 10</p> <p>14 A.M. Tuesday morning, if that deposit was</p> <p>15 required.</p> <p>16 Q. Okay. Could you just tell me which</p> <p>17 regulation it is that would require a credit in</p> <p>18 the reserve formula for the seizure of assets on</p> <p>19 the 19th?</p> <p>20 A. I believe the credit goes into the</p> <p>21 reserve formula because you would have customer</p> <p>22 assets allocating to a loan.</p> <p>23 Q. Okay.</p> <p>24 A. A bank loan.</p> <p>25 Q. Is that in 15c3-3?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes, it is.</p> <p>3 Q. Could you show me where in this</p> <p>4 exhibit?</p> <p>5 A. Could you give me the interpretation</p> <p>6 memos? It would be a lot easier to find it.</p> <p>7 Q. Absolutely. Yes. That would be in</p> <p>8 Exhibit 695.</p> <p>9 (Exhibit 695, Customer Protection -</p> <p>10 Reserves and Custody of Securities SEA Rule</p> <p>11 15c3-3, marked for identification, as of</p> <p>12 this date.)</p> <p>13 A. I believe it's on page 2625 of the</p> <p>14 FINRA Interpretation Handbook.</p> <p>15 Q. Okay. What portion of this on page</p> <p>16 2625?</p> <p>17 A. It says "Proprietary Bank Loans versus</p> <p>18 Customer Account Long."</p> <p>19 Q. Okay. Do you rely on anything else</p> <p>20 for your opinion that if there were assets</p> <p>21 seized, there would have to be a credit to the</p> <p>22 reserve calculation?</p> <p>23 A. I believe there are other portions</p> <p>24 within here that talk about the same thing --</p> <p>25 Q. This is the proprietary source?</p>
Page 292	Page 293
<p>1 D. McIsaac</p> <p>2 A. Customer property allocating to</p> <p>3 proprietary bank loan.</p> <p>4 Q. Okay. Now, I'm going to move on to</p> <p>5 coding errors. Your rebuttal report discusses</p> <p>6 two alleged coding errors: One regarding the</p> <p>7 classification of Woodlands Bank as a customer</p> <p>8 or non-customer?</p> <p>9 A. Right.</p> <p>10 Q. And another relating to an error in</p> <p>11 the ADP system; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Are you aware of any other alleged</p> <p>14 coding errors that would have affected the</p> <p>15 credit side of LBI's reserve calculation as of</p> <p>16 September 19, 2008?</p> <p>17 A. The ADP -- there were two instances of</p> <p>18 a ADP. It was certain accounts were not -- were</p> <p>19 picked up as customers. They should have been</p> <p>20 non-customer, as well as the allocation. But</p> <p>21 they're both this here.</p> <p>22 Q. So there's nothing other than what is</p> <p>23 discussed in your reports in the way of coding</p> <p>24 errors that you have identified?</p> <p>25 A. That I am aware of at this time, no.</p>	<p>1 D. McIsaac</p> <p>2 Q. Were you asked by the Trustee to</p> <p>3 identify transactions or events that might have</p> <p>4 required adjustments on the debit side of the</p> <p>5 reserve calculation?</p> <p>6 A. All issues brought to my attention by</p> <p>7 the Trustee would have been reviewed. There was</p> <p>8 no indication of only reviewing the credit side.</p> <p>9 In fact, the coding errors did have an impact on</p> <p>10 both the debit and credit side.</p> <p>11 Q. Okay. Did you make any independent</p> <p>12 effort to look for transactions or events that</p> <p>13 would have required an adjustment to the reserve</p> <p>14 calculation other than what was identified by</p> <p>15 the Trustee for you?</p> <p>16 A. Nothing else was brought to my</p> <p>17 attention that would have required that.</p> <p>18 Q. I understand. Did you make any</p> <p>19 independent effort to look for additional</p> <p>20 transactions or events?</p> <p>21 A. I did not.</p> <p>22 Q. Do you know if the Trustee looked for</p> <p>23 errors that would have caused an adjustment on</p> <p>24 the debit side of the reserve formula?</p> <p>25 A. I believe the Trustee and their</p>

Page 294	Page 295
<p>1 D. McIsaac</p> <p>2 advisors looked for all and any adjustments that</p> <p>3 would have impacted the 9/19 calculation.</p> <p>4 Q. Do you know if the Trustee and its</p> <p>5 advisors have completed its -- their analysis of</p> <p>6 any and all adjustments that would have impacted</p> <p>7 the 9/19 calculation?</p> <p>8 A. I believe the Trustee and their</p> <p>9 advisors are still researching facts and figures</p> <p>10 as of the 19th of September, and if anything was</p> <p>11 to come to their attention, I believe they would</p> <p>12 bring it up at that point in time. It was my</p> <p>13 understanding as of the time I filed the</p> <p>14 rebuttal report that no additional items have</p> <p>15 been found.</p> <p>16 Q. So you believe the analysis is still</p> <p>17 ongoing?</p> <p>18 A. I believe it's still in process, yes.</p> <p>19 Q. But you do believe that the Trustee</p> <p>20 and its financial advisors have engaged in the</p> <p>21 process?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 Q. Do you understand the question?</p> <p>24 A. I don't know what process you're</p> <p>25 talking about they engaged in.</p>	<p>1 D. McIsaac</p> <p>2 Q. The process of identifying -- the</p> <p>3 process of identifying any and all adjustments</p> <p>4 that would have impacted the 9/19 calculation?</p> <p>5 A. I believe they're still doing work as</p> <p>6 it relates to 9/19, and as I said in my rebuttal</p> <p>7 report, I don't think anything came to their</p> <p>8 attention by the time I filed that report.</p> <p>9 Q. Okay. In paragraph 16 of your</p> <p>10 rebuttal report, you say that the Woodland</p> <p>11 assets had actually been seized. What did you</p> <p>12 base that on?</p> <p>13 A. They were part of the assets that were</p> <p>14 in the free box that was taken by Chase.</p> <p>15 Q. So it's the same Chase matter as we've</p> <p>16 already discussed?</p> <p>17 A. No. These were never locked up in a</p> <p>18 seg account because the account was coded as a</p> <p>19 non-customer, not a customer.</p> <p>20 Q. On what day do you believe these were</p> <p>21 seized?</p> <p>22 A. When Chase seized all the assets</p> <p>23 versus the bank loan, which I assume was the</p> <p>24 19th.</p> <p>25 Q. Which you assume was the 19th?</p>
Page 296	Page 297
<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. In rebuttal paragraph 18, this</p> <p>4 is referring to I believe the ADP Broadridge</p> <p>5 issue?</p> <p>6 A. Uh-huh.</p> <p>7 Q. You say that, "As part of a review</p> <p>8 performed by Barclays," and you emphasize "by</p> <p>9 Barclays," "at the request of the S.E.C.,</p> <p>10 Barclays performed a partial recalculation of</p> <p>11 the reserve formula to adjust for these known</p> <p>12 discrepancies which revealed, as a result of the</p> <p>13 coding errors, a \$213 million shortfall."</p> <p>14 And I -- you can turn to Exhibit 8 if</p> <p>15 you want, that's what you cite, but I'd like to</p> <p>16 know what your basis is for saying that Barclays</p> <p>17 did a recalculation --</p> <p>18 A. I believe Barclays employees were the</p> <p>19 ones sending the information to ADP and</p> <p>20 requesting that a recalculation was done.</p> <p>21 Q. Okay. And do you know whether those</p> <p>22 Barclays employees were Barclays employees</p> <p>23 performing work for the Trustee under the TSA?</p> <p>24 A. I don't know in what capacity, but the</p> <p>25 letterhead on the note to ADP at Broadridge was</p>	<p>1 D. McIsaac</p> <p>2 Barclays.</p> <p>3 Q. I'm going to mark as Exhibit 696 a</p> <p>4 declaration of Robert Martini dated April 5,</p> <p>5 2010, and after she hands it to you my first</p> <p>6 question will be have you seen it before.</p> <p>7 (Exhibit 696, Declaration of Robert</p> <p>8 Martini, marked for identification, as of</p> <p>9 this date.)</p> <p>10 A. No, I have not.</p> <p>11 Q. Would you read paragraphs 5 through 7?</p> <p>12 Let me know when you're through.</p> <p>13 (Document review.)</p> <p>14 A. I've read it. I'm sorry, 5 through 7?</p> <p>15 Okay.</p> <p>16 Q. Okay. Assuming that what Mr. Martini</p> <p>17 says in his declaration is true, would that</p> <p>18 change your opinion that Barclays performed a</p> <p>19 recalculation of the reserve formula as set</p> <p>20 forth in paragraph 18 of your rebuttal report?</p> <p>21 A. I saw a letter going from Barclays to</p> <p>22 Broadridge directing them to make the changes.</p> <p>23 They did all the research and directed them to</p> <p>24 make the changes. Whether the employees who</p> <p>25 actually did the calculation were TSA employees</p>

Page 298	Page 299
<p>1 D. McIsaac 2 or Barclays employees I do not know. I don't 3 have the name of the employee who did it. 4 Q. Okay. Did you speak to any of the 5 employees on that letter? 6 A. No, I did not. 7 Q. Okay. Do you know if the 8 recalculation that is discussed in paragraph 18 9 of your Rebuttal Report was a complete 10 recalculation of the 15c3-3 requirement as of 11 9/19 or just an adjustment for the ADP 12 Broadridge issue? 13 A. I believe I said in here it was just 14 an adjustment for the ADP Broadridge as well as 15 the clarification of the 944 accounts. 16 Q. By the 944 accounts, you're referring 17 to the Woodland Bank? 18 A. No. 19 Q. No. What are you referring to? 20 A. 944 accounts were other accounts 21 classified as customers that should have been 22 reclassified as non-customer. 23 MS. NEUHARDT: I'm probably at a 24 halfway point if you want to take a short 25 break.</p>	<p>1 D. McIsaac 2 MR. OXFORD: Okay. That would be 3 great. 4 MS. NEUHARDT: There were two 5 things we wanted him to look for. 6 Let's go off the record. 7 THE VIDEOGRAPHER: The time is 5:54. 8 This is the end of the tape labeled number 9 6. We're going off the record. 10 (Recess.) 11 THE VIDEOGRAPHER: This is the start 12 of tape labeled number 7. The time is 6:23. 13 We are back on the record. 14 MS. NEUHARDT: Mr. Oxford, based on 15 our conversation off the record, you have 16 some statements to put on the record about 17 what Mr. McIsaac found during the break? 18 MR. OXFORD: Yes. Mr. McIsaac, you 19 had referenced a stipulation in response to 20 some questions that Amy asked you in 21 connection with the FID issue? 22 THE WITNESS: Right. 23 MR. OXFORD: Could you turn to your 24 Rebuttal Report, Exhibit 1, please. 25 THE WITNESS: Right.</p>
Page 300	Page 301
<p>1 D. McIsaac 2 MR. OXFORD: Can you identify what 3 Exhibit 1, please? 4 THE WITNESS: The substitution 5 agreement. I apologize for calling it a 6 stipulation. Agreement. 7 MR. OXFORD: Is that the document you 8 referred to when you were talking about the 9 stipulation? 10 THE WITNESS: Yes, it was. 11 MR. OXFORD: And can you also identify 12 for me what Exhibit 2 is to your Rebuttal 13 Report? 14 THE WITNESS: Exhibit 2 is the summary 15 by account of all of the FID accounts and 16 the assets that they had in their accounts 17 as of the 19th of September. 18 MR. OXFORD: Okay. Thank you. And 19 then the other issue that I just wanted to 20 clear up, if you could turn to your original 21 affidavit, which is Exhibit 691. 22 THE WITNESS: Right, those were in 23 693. 24 MR. OXFORD: Yes. And these are not 25 tabbed, but I'd like you to find Exhibit 28,</p>	<p>1 D. McIsaac 2 if you could. 3 THE WITNESS: So much easier if it was 4 tabbed. 5 MS. NEUHARDT: It's been discussed. 6 THE WITNESS: Okay, yes. 7 MR. OXFORD: Do you have Exhibit 28 in 8 front of you, sir? 9 THE WITNESS: Yes, I do. 10 MR. OXFORD: Was that the memorandum 11 you referred to in your earlier testimony 12 that was from Barclays Capital to 13 Broadridge? 14 THE WITNESS: Right. This was the 15 memo that went from Barclays to Broadridge 16 Capital. 17 MR. OXFORD: Is it your understanding 18 this was an analysis or review that was 19 conducted by these individuals on behalf of 20 LBI or Barclays Capital? 21 THE WITNESS: I believe they were 22 Barclays Capital employees. They reviewed 23 LBI and I think at the same time they 24 conducted a similar review of Barclays 25 Capital reports to determine whether or not</p>

Page 302	Page 303
<p>1 D. McIsaac 2 they were the same issue in the ADP or 3 Broadridge allocation matrix. 4 MR. OXFORD: Okay. Thank you. 5 MS. NEUHARDT: Neil, I believe you 6 also said that you would provide for us -- 7 you would review and identify for us the 8 materials on which you relied for his 9 testimony that the total amount of cash and 10 securities in the reserve account as of 9/19 11 was roughly 1.769 billion; is that correct? 12 MR. OXFORD: Yes, we will undertake to 13 do that. 14 MS. NEUHARDT: And that you would do 15 the same for Mr. McIsaac's testimony that 16 the assets at Chase were seized on September 17 19, 2008? 18 MR. OXFORD: Yes. Again, we'll 19 undertake to review the reliance materials 20 that were produced to you. 21 BY MS. NEUHARDT: 22 Q. Do you still have your report opened 23 to Exhibit 28, which we were just discussing? 24 A. I found it very quick. 25 Q. Is it your testimony that this is</p>	<p>1 D. McIsaac 2 your -- is the basis for your statement in 3 paragraph 18 of your rebuttal that Barclays 4 performed a partial recalculation of the reserve 5 formula to adjust for the discrepancies 6 discussed in this portion of your rebuttal 7 report? 8 A. Yes, I believe on or about January 9 2009, the allocation report was rerun and the 10 adjustments were made to it. 11 Q. But your basis for that statement, 12 that it was rerun in January, is not this 13 memorandum, is it? 14 A. This is the memorandum I believe to 15 Broadridge pointing out the issues and 16 requesting I thought to be rerun. 17 Q. But this does not state that Barclays 18 actually reran the calculation, does it? 19 A. I don't believe it does, no. 20 Q. Okay. 21 MR. OXFORD: Amy, not to interrupt, 22 but it occurs to me that there was a 23 document I marked at Mr. Vinella's 24 deposition that might be the one your 25 looking for.</p>
Page 304	Page 305
<p>1 D. McIsaac 2 MS. NEUHARDT: We can talk about that 3 off the record, but that's -- 4 MR. OXFORD: Okay. 5 MS. NEUHARDT: If he -- are you saying 6 that he relied on that document? 7 MR. OXFORD: That may be the document 8 he relied upon. I don't have it with me 9 today, but -- but I'm happy to review it and 10 let you know if that was what he relied 11 upon. 12 Q. Okay. And then you also referred to 13 Exhibit 2 to your original -- no, I'm sorry, 14 your rebuttal? 15 A. Rebuttal. 16 Q. Yes. And can you tell me what Exhibit 17 2 is? 18 A. Exhibit 2 is a schedule of all the FID 19 accounts and the assets in their accounts on 20 9/19, and these were the assets that were at 21 Chase. 22 Q. And from whom did you receive this? 23 A. From the financial advisors of the 24 Trustee. 25 Q. And did you rely upon a non-redacted</p>	<p>1 D. McIsaac 2 version of this document? 3 A. I believe I did. I believe it had the 4 names of the customers in there. 5 MS. NEUHARDT: We would like that 6 document, Neil. 7 MR. OXFORD: I'll take your request 8 under advisement. 9 Q. And from this document you believe you 10 were able to determine that these were customer 11 assets? 12 A. These are the account numbers for the 13 customers and they showed the ranges of where 14 the accounts were in the customer range. 15 Q. Can you show me what on here is 16 telling you that? 17 A. The redacted portion doesn't have the 18 account numbers. 19 Q. The redacted portions. 20 We definitely need the unredacted 21 version. 22 Did you do any research to confirm 23 that there were no subordination agreements 24 associated with these accounts? 25 A. These accounts were all listed as</p>

Page 306	Page 307
<p>1 D. McIsaac 2 customers. So, no, I did not do any 3 subordination -- review to see if any customers 4 in the FID subordinated their accounts to the 5 Trustee. But if they did, then I don't know why 6 they would be locked up in a separate account at 7 Chase to the benefit of customers. 8 MS. NEUHARDT: Strike the last part of 9 his answer as nonresponsive. Okay. 10 Q. I think we've followed up on 11 everything from the break. I would like to turn 12 to your discussion of -- in your rebuttal 13 report, it's paragraphs 19 through 21; in your 14 original report, it is paragraphs 39 and 40; and 15 you refer to it as "Assets Subject to LBI 16 Administration." 17 What is your basis for stating that 18 the 439 million in assets that you have 19 identified are customers assets? 20 A. These were assets in a box listed as 21 customer box, customer security -- customer no 22 lien account at LBIE for the benefit of LBI 23 customers. 24 Q. Did you do any independent 25 investigation of that?</p>	<p>1 D. McIsaac 2 A. I reviewed the LBIE agreement that 3 said that they were holding account free of 4 lien. 5 Q. When say LBIE you're referring to 6 L-B-I-E, right? 7 A. Yes. 8 They give control location memos to 9 the SEC. 10 Q. Okay. Were you -- were you aware of a 11 general policy at LBI that they would include 12 LBIE customers assets -- I'm sorry, LBI customer 13 assets that were held by LBIE in their lockup 14 requirement calculation? 15 A. I don't understand the question. I'm 16 sorry. 17 Q. Okay. Well, do you know whether as a 18 matter of course LBI would in fact include in 19 its reserve calculation an adjustment for the 20 LBI customer assets that were held by LBIE? 21 A. I saw nothing in the calculations that 22 led me to believe that they were not -- that 23 they were not considered them in a good control 24 location and, therefore, putting a credit in the 25 reserve formula.</p>
Page 308	Page 309
<p>1 D. McIsaac 2 Q. Did you ask -- did you speak to 3 anybody about this issue? 4 A. I did not speak to any Lehman or 5 Barclays employees. 6 Q. Okay. If in fact there was an 7 adjustment as a matter of course at LBI -- for 8 LBI customer assets held at LBIE, would that 9 change your opinion in any way? 10 MR. OXFORD: Objection to form. 11 A. If the 439 that I believe allocated to 12 a good control location and, therefore, was not 13 put into the formula, if somebody could show me 14 the adjustment putting that \$439 million into 15 the formula, I guess I would change my opinion, 16 but I'm not sure why they would get a good 17 control letter and then do that, but ... 18 Q. Your testimony is, though, that you 19 don't know one way or the other, correct? 20 A. I did not see anything to that. 21 Q. All right. Let's turn to your 22 discussion of the OCC deposit, which is in your 23 rebuttal report, paragraphs 24 and 25 on pages 24 11 and 12, and in your original report it is 25 paragraph 45 on page 17.</p>	<p>1 D. McIsaac 2 Now, is a broker-dealer able to 3 withdraw and transfer margin at the OCC without 4 funding the reserve account at the time of the 5 withdrawal? 6 A. Yes. 7 Q. Okay. Let's go, earlier today we 8 talked about the statement in paragraph 13 of 9 your rebuttal affidavit that the only relevant 10 point in time for the purpose of determining the 11 accuracy of LBI's reserve calculation is 12 September 19, 2008? 13 A. That's correct. 14 Q. Do you believe that that principle 15 applies to your opinion about the OCC deposit? 16 MR. OXFORD: Objection. Form. 17 A. I believe that opinion applies to it. 18 Q. Okay. Had the OCC margin deposit that 19 you refer to in your reports been withdrawn as 20 of September 19? 21 A. No, but in previous discussions 22 earlier this morning on my expert report, the 23 Barclays lawyers were assuming that the margin 24 was being transferred to LBI as of the 17th, so 25 if -- if to -- I'm sorry, to Barclays as of the</p>

Page 310	Page 311
<p>1 D. McIsaac 2 17th. 3 If LBI had agreed to transfer that 4 money, then I would assume that it was not a 5 good debit in the formula because it was 6 impaired. 7 Q. Well, by that logic, as of the 17th, 8 hadn't LBI agreed to transfer, for example, all 9 of its private investment management accounts to 10 Barclays as of a later date? 11 MR. OXFORD: Objection. Form. 12 A. I believe they determined what they 13 were going to transfer. Until you transfer the 14 customers' assets and the customer accounts, 15 they're still included in the reserve formula 16 until such time as you can transfer them. 17 If you have impeded an asset, then I 18 don't think you could put it into the formula, 19 just as if I had a customer receivable that 20 wasn't fully secured, I wouldn't put it in the 21 formula. 22 So if this deposit was sold to 23 somebody else prior to the 19th, then I think it 24 probably doesn't belong in the formula as of the 25 19th.</p>	<p>1 D. McIsaac 2 Q. Now, do you know whether the contract 3 had been approved by the court prior to -- well, 4 you said the 17th. Do you know if that contract 5 had been approved by the court as of the 17th? 6 A. I don't know when the contract was 7 approved. I believe it was sometime after the 8 fact, but if, as of the 17th, you agreed to sell 9 it and gave up your rights to that deposit, then 10 I don't know if that would be a good debit in 11 the formula. And I'm just going by what 12 everybody was saying, that the -- they agreed to 13 sell the margin prior to that and that thought 14 process. 15 Q. Could you show me -- well, are you 16 basing your opinion on anything in Rule 15c3-3? 17 A. I believe there are many parts of 3-3 18 that would talk about unsecured receivables and 19 how they would not go into the formula. This is 20 allowed in the formula because it's coming from 21 a clearing org. receivable. If you have given 22 up your rights to that receivable, then I don't 23 think you would include it in the formula. 24 Q. And is your position that LBI had 25 given up its rights as of the 17th prior to</p>
Page 312	Page 313
<p>1 D. McIsaac 2 court approval? 3 MR. OXFORD: Objection. Form. 4 Misstates the witness's testimony. 5 You can answer the question again. 6 A. No, my opinion is if it's determined 7 that that margin was sold prior to the 19th, or 8 as of the 19th, then it does not belong as a 9 debit in the formula. 10 Q. Is your opinion that a contract that 11 has not yet been closed nonetheless affects the 12 15c3-3 calculation? 13 A. My opinion is if you tell me you have 14 impeded that asset and you -- you have 15 effectively given up your right to that asset, I 16 would say that asset's not a good asset in the 17 formula. And that's all I'm saying. I'm not -- 18 I don't know when the contract was sold. 19 I'm being told, and people are 20 negotiating that -- and I think this would be 21 decided by the court eventually -- that the 22 agreement sold the margin to Barclays as of the 23 17th if that's the date of the agreement and 24 that's when that account -- that's when that 25 asset stopped becoming I believe a good asset</p>	<p>1 D. McIsaac 2 for LBI for reserve formula purposes. 3 They have given up their right to 4 receive that asset. I don't think they can put 5 a debit in there. The same as if I told a stock 6 borrow counterparty don't give me your money 7 back, I don't care. It wouldn't go in the 8 formula. 9 Q. If it were to turn out that the -- 10 they had not given up their rights until such 11 time as the court approved of the contract, 12 would that change your opinion? 13 MR. OXFORD: Objection. Form. 14 A. I don't know what the date would be 15 that they agreed to the contract. I -- this -- 16 I think this will be going in front of the court 17 eventually and the court will decide whether or 18 not the contract stays -- states that that was 19 being sold as at that point in time. 20 If that's the point in time I believe 21 the contract was effective or signed 22 theoretically agreed to as of the 19th, I don't 23 know if it matters when it's signed. If I have 24 agreed to impede an asset at any point in time, 25 it doesn't matter when I sign it. I think I</p>

Page 314	Page 315
<p>1 D. McIsaac 2 would not include that debit in the reserve 3 formula. 4 Q. So even if a court were to determine 5 that the contract was not effective until it 6 were approved, it's nonetheless your opinion 7 that the asset would be impeded as of the time 8 they signed? 9 A. As of the time that somebody agreed 10 that that asset was not an asset of theirs, that 11 they have sold -- they have given that asset 12 away, they sold that asset, I can't see how that 13 asset would be good for the -- as a debit in the 14 reserve formula. 15 Q. Do you believe LBIE -- sorry, LBI 16 continued to be able to withdraw from that OCC 17 account after the 17th? 18 A. I believe there were some restrictions 19 at the OCC on the 19th that they could not 20 withdraw moneys out of there on the 19th. 21 Q. The restrictions were imposed by the 22 OCC, correct? 23 A. Yes, they were. 24 Q. They were not imposed by Barclays? 25 A. I don't think Barclays imposed them,</p>	<p>1 D. McIsaac 2 no. 3 Q. So it's not the contract that was 4 preventing them from withdrawing assets after 5 the 17th? 6 A. As I stated earlier today, you weren't 7 here, that I would have anticipated the purchase 8 agreement to have some indication that they were 9 selling margin and at that point in time to talk 10 about the amount of margin that was being sold. 11 But once you've given up that right, 12 whether it be 500 million for a billion, I don't 13 think you can put it in the formula anymore. 14 Q. But they could withdraw it from the 15 OCC account? 16 A. And if it wasn't in the OCC account, 17 it wouldn't be a debit in the formula either. 18 Q. I understand, but I'm trying to 19 understand. Essentially you're saying that the 20 asset was impaired as of the date the contract 21 was signed; is that correct? 22 A. I'm saying if the -- if the court 23 determines that that is what happened on the -- 24 as of the Asset Purchase Agreement and that the 25 margin was being sold by Lehman to Barclays,</p>
Page 316	Page 317
<p>1 D. McIsaac 2 that that debit should not be in the formula 3 because they have given up their right to 4 receive that debit and it is no longer there for 5 the protection of customers. 6 Q. Yet you're also saying they 7 nonetheless had the right to withdraw those 8 funds prior to the -- or after the 17th from the 9 OCC? 10 A. And had they withdrawn those funds, 11 they wouldn't be in the formula. 12 Q. But they wouldn't be in the formula 13 for a different reason, correct? Because they 14 had been withdrawn? 15 A. That's right, and I don't -- 16 Q. And not because -- 17 A. And I don't know if the agreement -- I 18 didn't see anything in the agreement stipulated 19 that the amount that was there as of the 17th is 20 what was being sold, if the amount was there at 21 the end of the day is what was being sold or if 22 anything was being sold. 23 If, if it's determined that that \$507 24 million was being sold and that it was impaired 25 by the 19th by the thought process of selling</p>	<p>1 D. McIsaac 2 it, I don't think the debit should have been in 3 the formula. 4 Q. And yet you nonetheless believe that 5 if they also contracted to transfer tens of 6 thousands of customer accounts in that same 7 contract, that that transfer of customer 8 accounts should not be included in the 15c3-3 9 calculation? 10 MR. OXFORD: Objection. 11 A. No, I said the -- 12 MR. OXFORD: Objection to form. 13 A. The customer accounts should be 14 included in the calculation until such time as 15 they're transferred. If you're putting a debit 16 in the formula, effectively reducing your lockup 17 requirement because you have a good asset, 18 that's what I'm saying, if that was impeded, I 19 don't believe there should have been a debit in 20 the formula. 21 Q. If there's no adjustment to the debit 22 after withdrawal, why is an adjustment by an 23 agreement to withdraw on a later date required? 24 A. As far as I'm concerned, the agreement 25 should have stipulated if there was an asset to</p>

Page 318	Page 319
<p>1 D. McIsaac 2 be sold, what amount was to be sold, or what 3 amount at what point in time should have been 4 sold. 5 What I am saying if, if in fact the 6 court determines that that was a valid 7 transaction and that LBI gave up its rights to 8 this debit, that it should not have been in the 9 formula as of the 19th. 10 Q. And do you know whether the contract 11 stipulated an amount to be sold or at what point 12 in time to determine the amount to be sold? 13 A. No, I did not. 14 Q. So if in fact the amount was not 15 limited to \$507 million or the date as of which 16 the transfer would be made was later than 9/19, 17 does your opinion change in any way? 18 MR. OXFORD: Objection. 19 A. If at any point -- 20 MR. OXFORD: Objection to the form. 21 A. Sorry. 22 If at any point in time that was 23 determined that they had given up their rights 24 to that asset, any calculation done from that 25 point in time I do not believe should have</p>	<p>1 D. McIsaac 2 included that asset as a debit in the formula. 3 Q. Can you show me where in the either 4 FINRA or SEC Rule 15c3-3 it requires an 5 adjustment prior to the delivery of the assets 6 to another party. 7 A. I don't believe there's anything in 8 3-3 that talks to this. This is my opinion that 9 if you put a debit in the formula, it needs to 10 be realizable. It has to be secured. The 11 security for this would be that it's at the OCC 12 and they will return it to you when not needed. 13 Q. Okay. So you do not believe there's 14 anything in 3-3 that would require that? 15 A. I don't think there's anything in 3-3 16 that talks to an OCC deposit being sold 17 during -- prior to a calculation being finalized 18 and how it should be accounted for in the 19 formula. 20 Q. Okay. Is there anything in the FINRA 21 interpretations of 3-3 that would cover this 22 issue? 23 A. There's nothing that will cover this 24 issue. There are -- there are issues within 3-3 25 and I will gladly dig them out eventually, we</p>
Page 320	Page 321
<p>1 D. McIsaac 2 don't have time now, to show you that debits 3 have to be secured. I can't put a debit in for 4 a stock borrow if it's not secured. I can't put 5 any amount in that's not secured. 6 Q. Have you heard of a Transfer and 7 Assumption Agreement, TAA? 8 A. Yes. 9 Q. Let me go back. Until such time as 10 the account would have actually been transferred 11 to Barclays, wouldn't OCC still owe margin to 12 LBIE -- to LBI? My apologies. 13 A. LBI would have been the -- the 14 clearing firm at the OCC. If at any point in 15 time I've given up my rights to that, all I'm 16 saying is I don't think it's a good debit in the 17 formula. Whether or not OCC would give it back 18 to us or not, or give it back to LBI or not, at 19 any point in time when that sale was 20 consummated, they wouldn't get it back. 21 So putting a debit in the formula, 22 knowing that you cannot collect it, I think is 23 not in compliance with the rules. 24 Q. And yet you acknowledge that LBI could 25 have withdrawn that money after the 17th from</p>	<p>1 D. McIsaac 2 the OCC account? 3 A. I -- 4 MR. OXFORD: Objection. Form. 5 A. Yes, I acknowledge they could have 6 done that. 7 Q. Then how is that money less secured? 8 A. Because as of the 19th -- you have one 9 agreement that you're telling me that they -- 10 that they get the margin, and all I'm saying is 11 if Barclays believes that that agreement means 12 that they get the margin and the judge says, 13 yes, that was a binding agreement at that point 14 in time and they get the margin, all I'm saying 15 is that then that debit was impeded and I can't 16 believe that you would put a debit in the 17 formula that is impeded. And that's all. If 18 you don't have -- if you cannot have the right 19 to collect it, you shouldn't put the debit in 20 there. 21 Q. I believe I had asked if you were 22 familiar, if you had heard of the TAA? 23 A. Yes. 24 Q. Okay. Now, were you shown that 25 earlier today?</p>

Page 322	Page 323
<p>1 D. McIsaac 2 A. Yes, I was. 3 Q. Do you recall whether or not that 4 agreement was signed before or after September 5 19? 6 A. I believe it was signed on -- either 7 by some people on the 20th and some people 8 possibly on the 22nd. 9 Q. If the court were to hold that it was 10 the TAA -- if the court were to hold that it was 11 the TAA that effected Barclays' right to the 12 margin deposits, would it still be your opinion 13 that the calculation as of the 19th should have 14 been adjusted? 15 MR. OXFORD: Object to the form. 16 Assumes facts not in evidence. 17 MS. NEUHARDT: I believe as an expert 18 I'm entitled to ask him hypotheticals. 19 THE WITNESS: Is it okay to answer? 20 MR. OXFORD: You can answer. 21 A. I understand it might not have been 22 signed at a point in time. I believe the OCC 23 was looking for it to be signed as of the 19th. 24 There was all kinds of e-mails that I was shown 25 before stating that they were looking for it to</p>	<p>1 D. McIsaac 2 be signed to transfer it over effectively on the 3 morning of the 22nd to Barclays. 4 Again, that TAA is not a contract. 5 That TAA I believe is an agreement between 6 Barclays, Lehman, and the OCC to transfer 7 Lehman's contract and in the Lehman name to 8 Barclays. It's not the sale agreement for 9 determining when that agreement was done or 10 signed. It's a vehicle used to transfer -- for 11 the OCC to transfer the account name from Lehman 12 to Barclays. 13 Q. That entire answer was nonresponsive. 14 I move to strike it. 15 Please answer my question, which is 16 that if the court were to hold that it was the 17 TAA that effected Barclays' right to the margin 18 deposits, would it still be your opinion that 19 the calculation as of the 19th should have been 20 adjusted? 21 A. I would have to determine or review 22 what the court's reasoning why the TAA was the, 23 in fact, the agreement between LBI and Barclays 24 that sold that asset. Just -- I don't -- it's a 25 hypothetical and I don't know. I don't consider</p>
Page 324	Page 325
<p>1 D. McIsaac 2 that a sale agreement. 3 Q. If the court held that that was the 4 agreement that impaired the asset, and it was 5 not signed until the 20th or perhaps the 22nd, 6 would it change your opinion that the 7 calculation -- 8 A. No, it would not. 9 Q. Let me finish my question. 10 -- that the calculation as of the 19th 11 should have been adjusted? 12 A. No, it would not. 13 Q. And why? 14 A. Because it was negotiated, started 15 negotiating it on the 19th, and I don't think 16 you should put an asset -- a debit in the 17 formula that you have impeded, whether or not 18 you do it on Saturday or Sunday. 19 Q. So it is your testimony that the mere 20 start of negotiations impairs the asset? 21 A. That it is impaired because prior to 22 the next business day, I don't have that, I'm 23 not allowed to have that asset anymore. 24 Q. Because you started the negotiations? 25 A. Because it was finalized by the next</p>	<p>1 D. McIsaac 2 business day, by the morning of the next 3 business day, which effectively, to me, it was 4 done as of the close of business the 19th. 5 Q. So you're saying that even though -- 6 even if an agreement is reached after the close 7 of business, it would affect the calculation of 8 that day rather than the calculation of the next 9 business day? 10 MR. OXFORD: Objection. Form. 11 A. I believe that if you've sold the 12 asset prior to you needing to make your lockup, 13 the requirement, and you have impeded that asset 14 in any way, shape or form, that you should not 15 include it in the formula. 16 If that asset -- if that agreement, if 17 the court finds that that agreement is what sold 18 the asset and that was signed as of the 21st or 19 22nd, it was signed before the opening of 20 business the next day, so as effectively on the 21 19th they would not have had a receivable. 22 Q. Well, perhaps I misunderstand your 23 earlier testimony, but I thought you said that 24 the calculation would be done on Friday, the 25 19th, and in the ordinary course of business,</p>

Page 326	Page 327
<p>1 D. McIsaac 2 this would be done every Friday? 3 A. Uh-huh. 4 Q. So how would an event that happened 5 after the calculation have to be retroactively 6 included in the prior calculation? 7 A. Because I'm only saying -- because 8 it's being done and agreed to prior to the time 9 that the calculation is finalized that it should 10 be -- should be reviewed in that respect. 11 Q. What portion of SEC Rule 15c3-3 are 12 you relying on for that opinion? 13 A. SEC Rule 3-3 talks about secured 14 assets, and you cannot put a customer debit in 15 the formula unless it's fully secured. 16 Q. I just want to make very clear that it 17 is your position that a contract that was only 18 being negotiated prior to the close of business 19 on Friday, nonetheless if it reached agreement 20 prior to the opening of business the next 21 business day, it should -- it would result in a 22 retroactive recalculation of the requirement -- 23 of the calculation done on Friday? 24 MR. OXFORD: Is that -- that's a 25 statement, Amy. Do you have a question?</p>	<p>1 D. McIsaac 2 Q. Sorry. I did put the "it" before the 3 "is." 4 Is it your position that a contract 5 that is only being negotiated prior to the close 6 of business on Friday but that is closed prior 7 to the opening of business on Monday would 8 require a retroactive recalculation of the 9 calculation done Friday? 10 A. My opinion is that I don't believe the 11 TAA is -- is the contract. 12 Q. I'm not asking you whether or not the 13 TAA is the contract. I'm asking you whether or 14 not -- 15 A. I'm trying to finish my thought. 16 MR. OXFORD: Amy, we're all trying to 17 get out of here. If you could let Mr. 18 McIsaac finish his answer -- 19 MS. NEUHARDT: I'm going to ask it 20 again because he's clearly not answering the 21 question. 22 MR. OXFORD: Well, it's very hard for 23 you to reach that conclusion if you don't 24 let him finish his answer. 25 Q. But if you're going to tell me that</p>
Page 328	Page 329
<p>1 D. McIsaac 2 the TAA is not the contract, I'll ask it again. 3 A. I believe that the TAA impedes the 4 asset as of the 19th. 5 Q. Please show me what portion of 15c3-3 6 justifies that conclusion. 7 A. I -- I don't believe you'll find 8 anything in 3-3 that will say that, but I 9 believe that the asset is impeded as of the 19th 10 if you have agreed to sell it and not receive 11 any money back in return for it that you can put 12 into the customer debit, and that's all I'm 13 saying. 14 Q. Is there anything in FINRA that 15 supports that? 16 A. I don't believe there's anything other 17 than talking about secured assets. 18 Q. Let's move on to what was in your 19 original affidavit as paragraphs 46 to 49 and 20 you refer to as customer property seizure during 21 the transfer process. 22 A. Uh-huh. 23 Q. Now, as I understand your opinion in 24 your original affidavit, your basis for 25 identifying this 82 million was that LBI's RISC</p>	<p>1 D. McIsaac 2 system did not feed into LBI's Rule 15c3-3 3 calculation; is that correct? And I'm looking 4 at paragraph 47. 5 MR. OXFORD: Object to the form. 6 A. Yes, I think I say here that the RISC 7 system doesn't automatically feed the 3-3 8 calculation. 9 Q. Have you since learned that that is 10 incorrect? 11 A. No, I've been told and informed that 12 the RISC system is reviewed by personnel who 13 supply the preparers the debit and credit 14 balances for customer accounts to be included in 15 the formula. 16 Q. Who did you speak to that informed you 17 of that? 18 A. The Trustee's financial advisors. 19 Q. Is that Deloitte? 20 A. Yes, it is. 21 Q. Did you speak to anyone who had been 22 an LBI employee to confirm that to be true? 23 A. No, I have not. 24 Q. Did you ever speak to Peter Tennyson? 25 A. No.</p>

Page 330	Page 331
<p>1 D. McIsaac</p> <p>2 Q. While she gets this document, in your</p> <p>3 rebuttal affidavit, paragraphs 22 to 23, you</p> <p>4 discuss the same issue. You do not mention the</p> <p>5 RISC system as a basis for your report in the</p> <p>6 rebuttal affidavit.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Why is that?</p> <p>9 A. I think we tried to further clarify</p> <p>10 that these were moneys that were -- the accounts</p> <p>11 were debited as if the customers were paid. The</p> <p>12 customers were never paid, so an adjustment had</p> <p>13 to be made to -- to, in the normal course of</p> <p>14 business, you reconcile your bank accounts, you</p> <p>15 look at items that you thought were paid that</p> <p>16 weren't paid, and you would make the adjustments</p> <p>17 for those.</p> <p>18 These moneys were never paid to the</p> <p>19 customers so you effectively still have a</p> <p>20 payable to the customer.</p> <p>21 Q. Okay. And now, what is your basis for</p> <p>22 saying these moneys were never paid to the --</p> <p>23 paid to the customers?</p> <p>24 A. What I have seen is that the debits,</p> <p>25 they debited their accounts, and there was no</p>	<p>1 D. McIsaac</p> <p>2 adjustment coming from the RISC system that I</p> <p>3 was shown adjusting for this \$82 million.</p> <p>4 Q. Do you have any other basis for saying</p> <p>5 the moneys were never paid out?</p> <p>6 A. No, that is it. I think the customers</p> <p>7 actually made claims, possibly to the estate,</p> <p>8 that they weren't paid their moneys.</p> <p>9 Q. If it turns out that the RISC system</p> <p>10 did in fact feed into the 15c3-3 calculation,</p> <p>11 would that change your opinion in any way?</p> <p>12 A. Not if these amounts were not included</p> <p>13 as payables to the customers at that point in</p> <p>14 time.</p> <p>15 Q. Did you do any investigation of</p> <p>16 whether or not items within the RISC system</p> <p>17 would or would not have been fed into the 15c3-3</p> <p>18 calculation?</p> <p>19 A. I was informed that the debits and</p> <p>20 credits to be included in the reserve formula</p> <p>21 off of the RISC system were provided by</p> <p>22 personnel responsible for the RISC system</p> <p>23 independent of anything else.</p> <p>24 Q. Okay.</p> <p>25 A. They provided the adjustments to the</p>
Page 332	Page 333
<p>1 D. McIsaac</p> <p>2 formula for that day.</p> <p>3 Q. And this was Deloitte that informed</p> <p>4 you of that?</p> <p>5 A. Yes.</p> <p>6 Q. We may have to come back to that when</p> <p>7 she comes back.</p> <p>8 Okay. Now, your original affidavit</p> <p>9 discusses a proposed adjustment of 2.3 billion</p> <p>10 allegedly owed to LBIE's customers, correct?</p> <p>11 A. Uh-huh.</p> <p>12 Q. You do not discuss that in your</p> <p>13 rebuttal report, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Why is that?</p> <p>16 A. I believe the Trustee's advisor -- the</p> <p>17 Trustee has removed that and put that as under</p> <p>18 investigation until such time as it can be</p> <p>19 concluded whether or not it is a viable</p> <p>20 liability to the customers.</p> <p>21 Q. Okay. Do you continue to have an</p> <p>22 opinion on whether or not the adjustment is</p> <p>23 necessary?</p> <p>24 A. If it's determined that there is a</p> <p>25 liability to the omnibus customer account, yes,</p>	<p>1 D. McIsaac</p> <p>2 it should then go in the formula. It was in the</p> <p>3 records at that point in time as a payable and</p> <p>4 was removed from the formula.</p> <p>5 Q. Okay. But you do not know as of today</p> <p>6 whether or not there was in fact a liability to</p> <p>7 the omnibus customer account?</p> <p>8 A. No, that's why it's still under</p> <p>9 investigation.</p> <p>10 Q. Did you believe that it was not still</p> <p>11 under investigation at the time of your October</p> <p>12 5 affidavit?</p> <p>13 A. I believe we -- I'll have to look at</p> <p>14 my affidavit, but I believe we sort of alluded</p> <p>15 to the fact that it's still being investigated,</p> <p>16 and if such time it was found not to be true, we</p> <p>17 wouldn't require it, but I'll have to look.</p> <p>18 If you look at item -- at paragraph</p> <p>19 44, I basically say I was not able to see any</p> <p>20 documents to make this adjustment, and until</p> <p>21 such time as we saw it, that it should be held</p> <p>22 until we can determine if it should actually be</p> <p>23 owed.</p> <p>24 Q. Well, your October 5 report appears to</p> <p>25 be divided into, starting on page 13, items --</p>

Page 334	Page 335
<p>1 D. McIsaac</p> <p>2 you phrase it as items omitted or incorrectly</p> <p>3 reported in the reserve formula, and that goes</p> <p>4 through the top of page 19, and then on 19,</p> <p>5 number 2, is items currently under</p> <p>6 investigation, and then you list a number of</p> <p>7 other items?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Why did you put the 2.3 billion in</p> <p>10 your first category of items discussed in your</p> <p>11 original affidavit as opposed to the category of</p> <p>12 items under investigation?</p> <p>13 A. Because at this point in time we had</p> <p>14 shown -- been shown no documents that would</p> <p>15 prove that this credit should be -- should come</p> <p>16 out. Subsequent to that, I believe the Trustee</p> <p>17 has had some discussions with people and have</p> <p>18 decided to remove it until such time as I've</p> <p>19 seen those documents. I'm just not putting it</p> <p>20 in my affidavit until I can see something that</p> <p>21 proves it or that the claim is -- the claim as I</p> <p>22 believe is still out there from LBIE and until</p> <p>23 such time as it can be proven incorrect.</p> <p>24 Q. So in October when you did your</p> <p>25 initial affidavit, you assumed as true what the</p>	<p>1 D. McIsaac</p> <p>2 Trustee gave you?</p> <p>3 A. I saw the -- the credit coming out of</p> <p>4 the formula, an adjustment to the formula for</p> <p>5 the \$2.3 billion. There was no support for that</p> <p>6 credit coming out of the formula.</p> <p>7 Subsequent to that, I believe the</p> <p>8 Trustee and his advisors may have additional</p> <p>9 information that they are investigating and they</p> <p>10 decided to take it out of their motion.</p> <p>11 Q. In October did you investigate whether</p> <p>12 or not the amount at issue was related to an</p> <p>13 LBIE customer account or proprietary account?</p> <p>14 A. It was sitting in the LBIE omnibus</p> <p>15 customer account as a payable.</p> <p>16 Q. If it was in the customer account, did</p> <p>17 you investigate whether or not the obligation of</p> <p>18 the customer had been satisfied prior to LBIE</p> <p>19 filing for administration?</p> <p>20 A. There was an -- I don't know if that</p> <p>21 has anything to do with it. What does LBIE --</p> <p>22 this is owed to LBIE for its customers.</p> <p>23 Q. All right. Then if it was a customer</p> <p>24 account, did you investigate whether or not the</p> <p>25 obligation to the customer was satisfied prior</p>
Page 336	Page 337
<p>1 D. McIsaac</p> <p>2 to 9/19?</p> <p>3 A. We saw no proof that that</p> <p>4 adjustment -- there was no proof behind that</p> <p>5 adjustment that we could see at that point in</p> <p>6 time that I was shown or could be found</p> <p>7 supporting taking the credit out of the formula.</p> <p>8 Q. Did you investigate whether or not the</p> <p>9 obligation to the customer was satisfied prior</p> <p>10 to 9/19?</p> <p>11 A. I don't -- the customer is LBIE.</p> <p>12 Q. The underlying customer?</p> <p>13 A. The underlying customer is LBIE's</p> <p>14 responsibility. I don't think it's LBI's</p> <p>15 responsibility.</p> <p>16 Q. So is your answer no?</p> <p>17 A. No.</p> <p>18 Q. Have you conducted any further</p> <p>19 analysis on this issue since the time of your</p> <p>20 October 5 affidavit?</p> <p>21 A. No.</p> <p>22 Q. Now, we referred, actually, to Section</p> <p>23 2 of your original affidavit as items currently</p> <p>24 under investigation?</p> <p>25 A. Uh-huh.</p>	<p>1 D. McIsaac</p> <p>2 Q. The first one you identify on page 19</p> <p>3 starting with paragraph 51 is a Chase Bank</p> <p>4 overdraft. Have you done any further</p> <p>5 investigation on this matter since your October</p> <p>6 5 report?</p> <p>7 A. No.</p> <p>8 Q. Have you done any further</p> <p>9 investigation on any of the other --</p> <p>10 A. No.</p> <p>11 Q. -- issues identified?</p> <p>12 A. No.</p> <p>13 Q. Do you know of any SEC regulation that</p> <p>14 would prevent Lehman Brothers Holding Company</p> <p>15 from paying an amount to Barclays that was equal</p> <p>16 to the amount held in the reserve account?</p> <p>17 MR. OXFORD: Objection. Vague.</p> <p>18 A. I -- I am not fluent in all SEC rules</p> <p>19 as they affect holding companies.</p> <p>20 Q. Okay. Have you done any investigation</p> <p>21 as to the propriety of the amount of customer</p> <p>22 claims that have been filed against the estate?</p> <p>23 A. No, I have not reviewed the customer</p> <p>24 claim process.</p> <p>25 Q. So you have no opinion on how much the</p>

Page 338	Page 339
<p>1 D. McIsaac 2 estate will eventually have to pay out? 3 A. No, I have not seen that number at 4 this point in time. 5 MS. NEUHARDT: Okay. Let's take a 6 five-minute break. I may be through. 7 THE VIDEOGRAPHER: The time is 7:09. 8 We are going off the record. 9 (Recess.) 10 THE VIDEOGRAPHER: The time is 7:19. 11 We're back on the record. 12 BY MS. NEUHARDT: 13 Q. Mr. McIsaac, right before we broke, 14 you informed me that you have not conducted any 15 further investigation relating to the items 16 listed in Section 2 of your original affidavit 17 as items currently under investigation? 18 A. That's correct. 19 Q. Have you been informed of any progress 20 or findings of the financial advisors relating 21 to those items under consideration? 22 A. I believe in my rebuttal report I make 23 a statement to the fact that they have to date 24 have found nothing else that would impact the 25 formula.</p>	<p>1 D. McIsaac 2 Q. And do you know -- did they inform you 3 whether or not they have completed their 4 investigation as to any of those matters? 5 A. I don't believe they have finished it. 6 Q. Okay. And we discussed earlier that 7 if a calculation is done on a Friday in the 8 ordinary course of business and an additional 9 deposit is required, that deposit would be done 10 the following Tuesday at 10 A.M.; is that 11 correct? 12 A. By the following Tuesday at 10 A.M. 13 Q. No later? 14 A. Yes. 15 Q. Okay. In that situation, is a 16 broker-dealer in violation of SEC rules at any 17 time prior to 10 A.M. on the following Tuesday? 18 A. In violation of SEC rules regarding 19 what? They could be -- 20 Q. Are they in violation of any aspect of 21 SEC Rule 15c3-3? 22 A. As it pertains to that deposit, no. 23 There could be other reasons that they're in 24 violation of rules. 25 Q. But as it pertains to that deposit,</p>
Page 340	Page 341
<p>1 D. McIsaac 2 they would not be in violation as of that 3 Friday? 4 A. Correct. 5 Q. Okay. 6 MS. NEUHARDT: I have no further 7 questions. None from anybody else? 8 THE VIDEOGRAPHER: The time is 7:20. 9 This is the end of today's deposition. 10 We're going off the record. 11 oOo 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">_____ DANIEL McISAAC</p> <p>Subscribed and sworn to before me this day of 2010.</p> <p>_____</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">CERTIFICATE STATE OF NEW YORK) : ss COUNTY OF NEW YORK) I, Kathy S. Klepfer, a Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify: That DANIEL McISAAC, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness. I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter. I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed. In witness whereof, I have hereunto set my hand this 7th day of April, 2010. -----</p>

Page 342	Page 343
<p>1</p> <p>2 INDEX</p> <p>3 TESTIMONY OF D. McISAAC: PAGE</p> <p>4 Examination by Ms. Bloomer 5</p> <p>5 Examination by Ms. Neuhardt 241</p> <p>6</p> <p>7 EXHIBITS: PAGE</p> <p>8 Exhibit 684, Expert Report of Daniel McIsaac 6</p> <p>9 Exhibit 685, Declaration of Daniel Dziemian 47</p> <p>10 Exhibit 686, Deposition of Gary Romain 50</p> <p>11 Exhibit 687, Trustee's Memorandum in Further 121</p> <p>12 Support of His Motion for Relief</p> <p>13 Exhibit 688, Deposition of Bart McDade 178</p> <p>14 Exhibit 689, Deposition of James Kobak 219</p> <p>15 Exhibit 690, a document bearing Bates Nos. 235</p> <p>16 CGSH33921 through 922</p> <p>17 Exhibit 691, Affidavit of Daniel McIsaac 240</p> <p>18 Exhibit 692, Supplemental Affidavit of Daniel 240</p> <p>19 McIsaac</p> <p>20 Exhibit 693, Rebuttal Report of Daniel McIsaac 240</p> <p>21 Exhibit 694, Rule 15c3-3 267</p> <p>22 Exhibit 695, Customer Protection - Reserves 291</p> <p>23 and Custody of Securities SEA Rule 15c3-3</p> <p>24 Exhibit 696, Declaration of Robert Martini 297</p> <p>25</p>	<p>1</p> <p>2 INDEX (Cont'd.)</p> <p>3 REQUESTS FOR PRODUCTION:</p> <p>4 Page 257, Line 15</p> <p>5 Page 302, Line 5</p> <p>6 Page 302, Line 14</p> <p>7 Page 305, Line 5</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 344	
<p>1</p> <p>2 NAME OF CASE: In re Lehman Brothers</p> <p>3 DATE OF DEPOSITION: April 6, 2010</p> <p>4 NAME OF WITNESS: Daniel McIsaac</p> <p>5 Reason Codes:</p> <p>6 1. To clarify the record.</p> <p>7 2. To conform to the facts.</p> <p>8 3. To correct transcription errors.</p> <p>9 Page _____ Line _____ Reason _____</p> <p>10 From _____ to _____</p> <p>11</p> <p>12 Page _____ Line _____ Reason _____</p> <p>13 From _____ to _____</p> <p>14 Page _____ Line _____ Reason _____</p> <p>15 From _____ to _____</p> <p>16</p> <p>17 Page _____ Line _____ Reason _____</p> <p>18 From _____ to _____</p> <p>19 Page _____ Line _____ Reason _____</p> <p>20 From _____ to _____</p> <p>21</p> <p>22 Page _____ Line _____ Reason _____</p> <p>23 From _____ to _____</p> <p>24</p> <p>25</p>	

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Page 1

A				
ability (8)	111:10 114:21,23	132:16 144:7,15	112:2	197:5 322:14 323:20
27:17 36:7 139:14	115:14,16,19	170:23 171:11	acquiring (21)	324:11
147:23 148:8	117:19 118:7	173:6 185:20	59:22,22 94:20 96:8	adjusting (1)
188:10 282:7	120:20 124:10,12	189:12,20 190:8,9	132:23 153:6,13	331:3
289:10	125:12 133:13,20	191:20 192:17,24	156:4 157:7,18,23	adjustment (18)
able (23)	133:22 134:12	194:8 198:12,13,17	158:15,18,21,22	293:13,23 298:11,14
23:13 27:23 54:18,23	144:4 156:15 173:2	205:10,19 224:14	159:4,7,11,18	307:19 308:7,14
56:3 85:9 101:13	173:5 180:9,21	228:21 232:23	162:15 169:5	317:21,22 319:5
102:2 111:21	183:23 186:22	234:8,12,18,21	acquisition (19)	330:12 331:2 332:9
118:18 132:20	188:18 190:21	236:12,14,17,23	14:5 15:13,20,24 17:8	332:22 333:20
144:25 148:10	191:7 192:15	237:10 247:12	19:21,22 20:11	335:4 336:4,5
149:7,8 185:11	199:20 228:25	259:21,25 260:9,20	24:15 37:11,24	adjustments (7)
193:9 247:16	233:10 247:14	262:4,7 274:4,9	51:12,15 67:9 68:8	293:4 294:2,6 295:3
257:11 305:10	259:2,9,17,18,22	275:16 278:18	95:6 155:16 258:4	303:10 330:16
309:2 314:16	260:3,4,6,6 262:2	279:3,8,10,10,12,17	258:11	331:25
333:19	263:2,4 264:10	281:18 282:2,4,9,14	acquisitions (8)	Administered (1)
ABN (7)	268:16 272:9 279:4	282:20,25 283:8,11	9:7 11:2,5 12:2 13:10	1:8
12:5,18 13:13 15:21	279:10 281:17	283:17,19 284:25	14:18 68:13 258:10	administration (2)
15:25 17:9 258:16	286:12 288:3,8	285:3,7 288:24	act (1)	306:16 335:19
ABN's (1)	290:11 291:18	289:20 292:18	154:14	ADP (10)
19:25	295:18,18 300:15	298:15,16,20,20	acting (1)	245:13 292:11,17,18
abreast (1)	302:10 305:12,18	300:15,16 304:19	250:11	296:4,19,25 298:11
27:19	306:6,22 307:3	304:19 305:14,24	action (2)	298:14 302:2
Absolutely (3)	309:4 312:24	305:25 306:4 310:9	184:2 341:15	advance (2)
12:12 242:10 291:7	314:17 315:15,16	310:14 317:6,8,13	actions (1)	44:25 45:2
academic (2)	320:10 321:2	329:14 330:10,14	180:13	advancing (1)
100:4 101:5	323:11 332:25	330:25	activity (1)	41:21
accept (3)	333:7 335:13,13,15	accuracy (8)	44:4	advantage (2)
59:7 88:21 116:14	335:16,24 337:16	78:10 147:18 148:5	actual (4)	42:15 184:6
accepted (2)	accounted (1)	265:10 275:13,23	14:7 18:14 77:5	advice (3)
206:16 210:16	319:18	279:14 309:11	133:22	252:9 276:14,14
accepts (1)	accounting (6)	accurate (1)	add (5)	advise (7)
43:23	49:17 50:4 51:12 52:2	86:8	130:3,8 133:8 272:24	169:13,16,18 211:2,6
access (8)	245:23 248:24	accurately (1)	283:22	211:15,19
281:25 282:2,5 283:5	accounts (156)	21:5	addition (4)	advised (2)
283:11 284:3	17:20 18:10,11,15	acknowledge (3)	108:15 115:10 178:24	79:20 212:14
288:23 289:4	19:19 28:21,22	173:25 320:24 321:5	182:13	advisement (2)
accessible (3)	29:17 42:22 43:10	acknowledged (2)	additional (14)	257:21 305:8
75:20,24 186:5	43:17,19 44:9,11,17	172:20 286:16	26:20 28:12 58:24	advising (8)
accommodate (1)	49:8,12 60:4 61:15	acquire (6)	129:7 143:19 179:2	79:24 160:8 169:4,8
6:17	61:17,19,24,25	21:23 88:23 89:19	182:15 197:20	171:14 210:23
accomplishes (1)	71:19 74:10 79:14	108:23 152:18	204:18 274:17	211:12 237:12
207:22	84:5,7,9,13 85:6	208:19	293:19 294:14	advisor (3)
account (115)	89:8 100:2 106:12	acquired (11)	335:8 339:8	172:5 275:11 332:16
10:17 28:3,17 31:8,16	106:18,25 107:6,10	12:4,17,17 17:5 18:12	address (1)	advisors (16)
33:11,13,24 34:19	107:22,25 109:19	21:21 150:20	31:13	7:18,19 64:24 65:8,17
35:12,24 36:8 42:2	109:22 110:18,21	202:14,18,20	adequate (10)	275:25 276:2,5
43:12,16,24 44:2,4	111:13 113:25	258:12	37:5 59:20 94:12	294:2,5,9,20 304:23
44:19 48:13,17,25	120:22,23 124:16	acquirer (10)	102:24 105:16	329:18 335:8
49:3,9,16 50:4	124:24,25 125:2,17	59:14 112:4 113:7	126:20,24 128:20	338:20
53:14 60:18,22	125:23 126:13,24	117:8 152:15 155:2	138:24 171:9	advisory (4)
73:17 80:6 85:12	127:23 128:2,5,5,6	189:20 190:24	adjust (3)	201:19,24 202:9
86:22 88:19 90:22	128:13,14,15,23	212:14 213:13	290:10 296:11 303:5	250:8
	130:11,16,19,20	acquirers (1)	adjusted (4)	affect (6)

Contains Highly Confidential Portions

Page 2

68:23 88:12 193:23 289:9 325:7 337:19 affidavit (28) 240:9,12 241:5,10 257:9 274:17 275:2 275:19 276:17,18 280:22 300:21 309:9 328:19,24 330:3,6 332:8 333:12,14 334:11 334:20,25 336:20 336:23 338:16 342:17,18 affidavits (5) 8:9 247:7 251:8,10 276:25 affiliate (31) 38:5,7 41:25 42:10,18 44:19 45:11,16 48:7 48:13 52:3,22 53:14 54:3,10,13 57:5,15 58:22 59:4 60:3,8 60:12,17,21 117:18 118:2,7 120:2,7 124:9 affiliates (16) 38:14 42:22 44:24 47:22 49:13 57:19 57:20,22 58:4 59:9 60:2 117:22,24 120:7 144:14,14 afford (1) 166:20 afraid (1) 185:13 afternoon (6) 146:2,10,11 199:15 199:16 240:23 afternoons (1) 271:12 agent (1) 20:4 aggregate (1) 164:8 ago (6) 77:17 85:4 100:12 255:12,22 256:10 agree (60) 34:16,25 35:9 37:21 53:11,16 57:13,23 69:21 72:24 74:8 75:18,23 78:13 80:13,19 82:20 84:16,25 86:7 101:3	101:25 104:19 105:18 107:18,25 109:21 110:21 111:12 114:23 118:3 119:3 121:24 122:12 123:4,14 126:11 135:25 142:22 150:6 163:17 173:12 181:16 190:8 191:19 198:10,11 198:15 200:3 202:19,21 222:6 223:24 225:3,20 229:8,14,17 231:23 239:8 agreed (21) 121:15 122:13 166:22 167:8,20 168:10 173:13 196:18 208:17 209:21 217:19 310:3,8 311:8,12 313:15,22 313:24 314:9 326:8 328:10 agreeing (5) 58:21 80:20 138:9 209:19 239:17 agreement (87) 39:11 40:10 41:11 42:11 43:3 63:3 69:17,18,23 87:19 104:15 171:17 172:7,13 173:12,22 173:23 174:3,4,5,10 175:9,12,17,24,25 193:3 197:7 200:15 203:6 205:12,22 206:25 207:5,11,15 207:16,17,18,21 208:24 210:24 211:9,12 212:25 215:3,9 217:2 220:13 224:13 228:6 237:21,22 238:6,25 239:4,7 247:2 278:12 279:16,18 300:5,6 307:2 312:22,23 315:8,24 316:17,18 317:23,24 320:7 321:9,11,13 322:4 323:5,8,9,23 324:2 324:4 325:6,16,17	326:19 agreements (2) 218:24 305:23 agrees (2) 43:24 44:2 ahead (1) 64:15 AICPA (3) 255:5,14,16 al (1) 1:8 Albany (1) 3:14 alert (1) 29:10 alleged (2) 292:6,13 allegedly (1) 332:10 allocate (1) 21:11 allocated (1) 308:11 allocating (2) 290:22 292:2 allocation (12) 241:7,9 244:12 245:9 245:11 246:16 247:19 248:14 259:14 292:20 302:3 303:9 allow (7) 6:7 28:15 35:23 42:13 54:11 74:14 239:2 allowed (4) 64:10 263:13 311:20 324:23 alluded (1) 333:14 alternative (1) 109:10 Alternatively (1) 121:6 AMAN (1) 3:24 ambiguities (1) 217:12 ambiguity (4) 210:17 211:3 285:6 289:19 ambiguous (5) 174:21 225:12,17 227:5,9 America (3)	67:12,18 214:12 AMINA (1) 4:16 amount (40) 31:19 33:10 39:14 41:20 48:15 63:9 67:8 68:7,18 72:20 76:23 86:24 95:5 96:7,11,12 114:25 135:2 184:10 185:4 185:19 190:4 210:20 260:18 261:8 290:10 302:9 315:10 316:19,20 318:2,3,11,12,14 320:5 335:12 337:15,16,21 amounts (6) 46:8 54:2,18 90:21 263:7 331:12 Amro (6) 12:5,18 13:13 15:21 15:25 258:16 Amy (11) 3:16 239:25 240:24 261:3 277:15 279:24 283:21 299:20 303:21 326:25 327:16 analysis (12) 58:17 108:11 110:6 144:21 161:20 162:12 165:19 243:14 294:5,16 301:18 336:19 analyst (1) 245:2 analyze (12) 25:16 81:11 108:13 110:10 138:21 144:25 157:19 159:10,11 164:15 192:2 246:20 analyzing (5) 19:7 24:14 78:22 79:21 139:13 and/or (4) 16:23,25 31:14 276:5 answer (85) 6:8,12 14:23 18:2 21:9 23:13 24:8 25:19 30:4 35:21 51:18 52:8 62:10 64:15 70:2 90:2	110:15 111:7,17 115:23 119:8 123:20 126:16 128:19 130:24 131:14 139:3,11 143:23 154:6 155:25 156:8 157:9 162:25 166:12 172:11 175:16 176:21 177:9 182:16,18 187:24 191:5 193:9,24 195:24 196:25 197:16 205:16 208:3 215:7 216:23 220:21,25 221:13 221:24 233:6 243:18 247:16 251:17,25 257:11 259:11 263:10,16 264:2 266:2 268:3 270:8,22 272:12 273:20 276:20 277:2 287:9 290:4 306:9 312:5 322:19 322:20 323:13,15 327:18,24 336:16 answered (27) 70:22 111:16,18 119:7 139:10 154:5 166:11 168:4 177:8 181:10 187:5,23 189:23 191:4 195:4 196:24 197:15 208:3 218:11,12 227:20 231:10 233:20 238:18 263:10 270:17 290:13 answering (3) 80:10 183:3 327:20 answers (2) 184:23 285:11 anticipate (1) 198:20 anticipated (4) 108:17 151:2 163:13 315:7 anybody (14) 34:22 53:19 58:16 64:18,21 215:15 228:7 236:24 246:19 268:5 275:22 288:18
--	--	--	--	--

Contains Highly Confidential Portions

Page 3

<p>308:3 340:7 anybody's (1) 159:23 anymore (2) 315:13 324:23 anyplace (1) 180:23 anyway (1) 187:10 APA (7) 40:8 62:5 63:11,25 64:7 237:16 248:5 apologies (2) 265:6 320:12 apologize (5) 90:16 144:17 245:6 274:19 300:5 appear (1) 94:13 appeared (1) 207:9 appears (6) 37:16 57:25 159:13 226:5 242:5 333:24 appetite (1) 162:7 applies (3) 126:12 309:15,17 apply (1) 268:12 appointed (1) 273:2 appreciate (2) 195:9 216:22 approach (3) 76:11 188:21 196:3 approached (1) 99:22 appropriate (1) 271:2 approval (7) 104:3 263:20,23 264:3,7,10 312:2 approve (1) 56:20 approved (9) 104:3 175:10 216:5 270:13 311:3,5,7 313:11 314:6 approximately (7) 5:6 9:2,12 37:16 49:11 78:3 141:25 April (7) 1:15 2:2 5:5 212:23</p>	<p>297:4 341:24 344:3 area (4) 30:18,25,25 242:4 areas (3) 9:13 26:10 38:16 arguably (6) 121:18 122:22 124:3 126:8 140:12 142:7 argumentative (1) 213:8 arising (1) 44:3 arrange (2) 169:18,24 arrangement (1) 171:16 arrangements (4) 169:9 170:11 171:8 175:4 arranging (2) 168:19 169:19 aside (1) 133:18 asked (39) 30:2 76:15 109:17 110:16,16 111:15 111:23 119:7 139:10 154:5 166:11 168:3 177:7 178:23 181:9 186:9 187:4,22 188:11 189:22 191:3 195:4 196:23 197:14 208:2 218:10 227:19 231:9 233:19 238:17 246:19 247:11 248:14 263:9 280:9 280:12 293:2 299:20 321:21 asking (27) 62:21,23,24 70:25 85:17 89:4 139:3 152:21 160:13 161:11 163:22 168:9 188:25 189:3 192:13 195:12,15 211:10,11 213:18 216:24 225:8 247:10 261:3 286:24 327:12,13 asks (2) 103:3,23 aspect (1)</p>	<p>339:20 aspects (2) 12:22 18:5 assess (18) 97:12 98:5,9 137:25 138:7 142:14,15 144:17,18 158:5 160:16 161:12 163:25 165:16 168:5 187:6 189:25 215:18 assessed (2) 55:24 216:21 assessing (6) 98:11,12 137:23 139:7 162:2 217:3 assessment (8) 96:23 138:11 160:8 160:12 161:7 166:18 215:25 216:3 assessments (1) 161:2 asset (62) 15:15 38:8 39:10 63:3 104:18 108:16 112:18 115:9,11 116:2 117:6,9 199:20,23 200:15 203:5 207:9 208:18 209:4,24 210:8,11 210:12,13 211:17 212:25 213:14 237:20 247:2 258:20 275:17 310:17 312:14,15 312:16,25,25 313:4 313:24 314:7,10,10 314:11,12,13 315:20,24 317:17 317:25 318:24 319:2 323:24 324:4 324:16,20,23 325:12,13,16,18 328:4,9 assets (229) 9:25 10:6,15 16:21,23 16:24 30:20 33:10 38:3,7,10,18,20,22 40:11,23 41:4,6,8 41:10,19 55:15,20 79:2,4 87:10 89:16 89:18 95:11,21,22 96:19 97:4,4 100:13</p>	<p>106:10 109:7 114:10,12,12,16 115:5,7,25 116:2 117:13 121:10,16 121:21 122:14,24 123:22,23,24 124:5 124:15 125:4,16,24 126:10,14 128:17 130:2,18 133:5 134:4,6 140:11 142:8,25 156:22 171:21,25 174:25 175:18 179:2,8,10 179:12,22 180:2,18 180:20,23,25 181:3 181:4,7,13,17,25 182:6,15,18,18,21 183:11,13 196:13 197:20 198:3,9,24 199:17,25 201:14 203:7,10,11,13 204:9,11 205:10,20 206:5,6,7,9,10,10 206:12,18,20,21,24 207:5,8,12,22,24,25 208:4,6,10,22,25 209:2,2,7 210:5,6 210:18,25,25 211:4 211:8,13,13,15 212:20,22 213:4,5 215:23 216:17 217:13 222:15,16 223:3 224:18,22 225:10,16 227:22 227:23 230:22 231:7 234:5,15 237:14 239:4,9,15 246:4 247:12,13 258:10,12,21 259:2 259:5,6,15,15 268:16 275:4 278:25 279:2,8 280:4,5,6,8,24,25 281:12 282:3,15 283:5 284:10,18 285:17 287:23 289:16 290:9,18,22 291:20 295:11,13 295:22 300:16 302:16 304:19,20 305:11 306:15,18 306:19,20 307:12 307:13,20 308:8 310:14 315:4 319:5</p>	<p>326:14 328:17 asset's (1) 312:16 assigned (1) 220:16 assigning (1) 61:11 assignment (2) 43:23 45:3 assignments (1) 173:9 assigns (1) 172:20 assisting (1) 253:7 associated (13) 57:14 98:6 137:24 138:11 139:7 147:24 148:9 150:18 186:14,16 200:4,6 305:24 association (2) 5:10 255:9 assume (61) 32:3 39:8 45:15 48:21 49:2 61:18,20 69:15 73:11 74:18 75:15 76:16 78:25 80:24 90:4,19 100:24 113:11 114:11 118:16 144:23 149:6 150:25 152:24 155:2,8,12 157:15 159:14 162:17 165:24 166:14 171:4 172:12 173:24 175:9 184:7,25 189:12 190:6 191:6 191:12 193:4 195:10 198:8 210:3 212:11,21 213:3,23 214:4,6 215:8 216:2 225:19 264:8 271:2 289:12 295:23,25 310:4 assumed (15) 41:7 44:7,10 59:8 90:25 108:6 109:24 110:23 117:14 118:10,11,14 182:17 207:16 334:25 assumes (26)</p>
---	---	--	---	--

Contains Highly Confidential Portions

Page 4

44:2 69:11 108:4 130:22 135:6,19,22 142:13 143:16 150:10 153:15 154:10 155:7 156:7 172:10 182:25 187:23 189:23 191:4 193:8 212:16 213:19 214:2,10 287:6 322:16 assuming (32) 34:7 48:16 76:18 90:20 93:15,23 103:25 107:10 120:6 128:22 142:5 150:5 153:10 158:10 161:23 166:3,17 179:24 181:24 182:2,20 191:19 193:11 216:4 223:6 229:23 236:16 237:13,18 270:15 297:16 309:23 assumption (9) 43:2 207:15 215:11 233:8 237:21,22 238:25 264:12 320:7 assumptions (1) 215:12 atmosphere (1) 20:13 attached (6) 10:24 261:21 275:18 279:18 280:13,16 attachment (1) 127:7 attempted (2) 288:2,7 attempting (1) 149:12 attention (6) 29:11 127:8 293:6,17 294:11 295:8 attorneys (6) 3:6,12,21 4:5,12 238:21 AT&T (1) 161:12 auction (8) 74:19,23 75:25 76:23 76:24 180:8,20 183:18	auctioned (1) 76:8 auctioning (2) 76:5,11 audit (1) 255:16 auditing (1) 255:17 August (2) 94:22 214:16 Austin (1) 73:5 authority (2) 21:4 175:23 authorized (1) 173:13 authorizing (1) 220:24 automatically (1) 329:7 available (3) 75:14 181:18 182:23 Avenue (2) 2:7 4:6 average (5) 34:16 35:9,15,16,20 avoid (3) 168:23 189:18 211:3 avoided (1) 73:16 aware (21) 28:19 35:22 36:10 41:18 58:3 74:8 140:16 142:5 170:4 180:7 236:19,24 245:25 260:2 278:2 278:6 282:13 288:10 292:13,25 307:10 A.M (6) 271:20 272:4 290:14 339:10,12,17 B bachelor (1) 248:23 back (55) 13:23 45:10,24 46:12 46:23,25 47:14 48:5 48:18 49:19 50:2,7 50:11 51:2 52:21 53:2 75:12,16 91:20 105:3 109:15 111:19 130:3,8	133:8 139:24 146:7 148:15 171:12,25 172:8 176:2 177:18 184:24 186:11,12 186:18 187:9 199:13 204:8 230:5 236:25 240:20 254:22 256:21 299:13 313:7 320:9 320:17 18,20 328:11 332:6,7 338:11 background (3) 8:21 26:12 180:5 bad (2) 106:10 157:15 balance (5) 37:11,25 86:24 209:23,24 balances (5) 17:20 133:8 275:16 281:18 329:14 bank (18) 49:9 55:11 67:12,18 68:15 214:11 260:3 262:2 284:15 286:13 290:24 291:17 292:3,7 295:23 298:17 330:14 337:3 bankrupt (2) 56:23 61:21 bankruptcy (5) 1:2 77:12 78:23 79:21 242:19 banks (1) 260:12 Barclays (193) 3:12,21 5:24 37:11,21 37:23 38:18 41:7,18 42:7,21 43:23 44:7 44:10,14,15,24 45:9 45:15,23 47:13 48:5 48:14 49:12,19 50:6 52:12,21 53:11,22 54:2,6 56:2,3,5 57:3 57:10,21,23 58:20 59:19 60:6 61:16 62:3,16 63:10 66:17 66:22 72:8 73:6,23 80:21 87:6,15,19 88:6,20 92:6 93:3 93:23 94:4,19 96:7 98:19,22 99:18	100:19 101:21 104:15 105:4,5,13 105:14 107:25 109:22 110:21 111:13 114:24 117:14 118:5,16 119:4,25 121:8,15 126:23 127:22 128:20 129:20 130:10,17 134:25 136:7 138:12 140:10 147:13,21 147:22 148:8 149:12,17 150:20 150:21 153:5,9 159:14,17 160:9 162:15 166:7,8,13 167:20 168:19 169:2 170:11 172:21 174:15 176:11 177:5,6 178:18 191:21 202:14,20 207:18 208:18 211:25 212:7,9,16 213:19 214:21 215:13,20 218:17,25 220:16 221:3,13,18 233:11 233:14 236:15,16 236:21 238:3,12,21 239:2,10 240:24 246:2,4 247:20 278:3,7 296:8,9,10 296:16,18,22,22 297:2,18,21 298:2 301:12,15,20,22,24 303:3,17 308:5 309:23,25 310:10 312:22 314:24,25 315:25 320:11 321:11 322:11 323:3,6,8,12,17,23 337:15 bargaining (1) 105:21 Bart (4) 3:9 178:7,11 342:13 base (8) 19:7,10 27:21 59:15 112:18 137:3 276:16 295:12 based (30) 10:20 30:22 32:7,12 34:10,13,21 58:18	108:17 112:15,21 136:9 160:2,21 161:22 179:24 194:16 198:18 214:8 215:11 241:15 243:12,13 259:14 263:18 266:22,22 269:3 271:8 299:14 basic (1) 10:23 basically (6) 9:24 53:9 93:5 264:15 277:17 333:19 basing (3) 264:12 273:15 311:16 basis (28) 44:13 46:5 57:12 61:14,18 90:13 98:8 98:11 163:4,6 164:15,21 195:6,13 197:22 210:10 252:2,6 268:17 269:7 296:16 303:2 303:11 306:17 328:24 330:5,21 331:4 basket (1) 152:5 Bates (2) 235:2 342:15 Battery (1) 4:13 BDW (3) 272:14,16,21 bearing (3) 137:13 235:2 342:15 becoming (1) 312:25 beginning (3) 86:18 159:20 237:23 begins (1) 203:7 behalf (17) 44:19,24 103:24 170:24 183:17 219:11 228:10,19 229:3,11,12,19,21 229:22 230:8 231:18 301:19 belief (2) 138:23 268:17 believe (234) 7:11 8:14 11:5 13:7
--	--	--	--	---

Contains Highly Confidential Portions

Page 5

17:9 27:12,25 29:10 29:13 30:3 33:24 37:3 38:5,7,13,19 39:4,17,19 41:7,8 41:16,25 42:12,21 43:19 46:7 50:17 53:25 54:6 55:14 57:3,21 58:7 59:19 63:20,23 64:9 65:25 67:12 69:2,12 70:3 70:16 71:10 72:7,14 72:21 73:4 75:11,15 76:7,14 78:18,19 79:18 82:18 83:6,9 86:13,18 87:2,17,18 87:20,24 88:5,9,16 90:9 93:8 94:22 97:24 98:2 102:4,6 104:13,25 105:6 112:16,23 114:22 117:12,21 120:5 124:11 126:2,24 136:5,25 140:22,25 141:5 142:6,14 143:12 144:12 146:16,22,23 148:13,17 153:8 163:2,11,24 164:13 169:10 170:7,8 176:14 178:13,19 187:6 196:11 200:13 203:20 204:24 207:7 212:5 215:8 216:25 217:24 218:12,13 224:7,17 226:8 227:21 228:13 232:5 233:16,24 234:10 235:15 236:19 237:12 243:20 251:12 260:5,11,15,22 262:10 263:22 264:2,6,14 265:13 266:3,8,15 267:12 268:6 269:2,11,19 270:11 271:3 272:6 272:10,13 278:12 279:15,20 280:16 281:13,17 282:17 282:19,24 284:20 285:2,6 290:13,20 291:13,23 293:25 294:8,11,16,18,19	295:5,20 296:4,18 298:13 301:21 302:5 303:8,14,19 305:3,3,9 307:22 308:11 309:14,17 310:12 311:7,17 312:25 313:20 314:15,18 317:4,19 318:25 319:7,13 321:16,21 322:6,17 322:22 323:5 325:11 327:10 328:3,7,9,16 332:16 333:10,13,14 334:16,22 335:7 338:22 339:5 believed (12) 107:21 109:9,18 110:17 111:9 112:25 113:8 166:23 167:10,22 169:20 196:3 believes (1) 321:11 belong (3) 134:4 310:24 312:8 benefit (17) 81:2,6 190:11,25 220:20 222:18 223:16,19,22 260:6 263:3,5,8,12 279:4 306:7,22 benefits (3) 43:25 109:4 112:22 best (2) 184:6 252:18 better (8) 42:16 51:21 82:10 103:21 105:7 108:10 110:4 149:11 betting (2) 136:18 138:19 beyond (3) 142:23 198:24 221:5 bid (3) 12:20 15:15 18:21 bidders (1) 183:21 bill (1) 54:16 billed (2) 256:17,25 billion (44)	37:12,17,18,22,24 39:17,18,20 41:3,5 77:3 78:3,15 84:22 84:23 94:24 95:3 97:14,14 98:3 108:7 108:8 110:2,3 114:20 115:15,16 117:13 119:10,13 141:22 143:4 181:25 189:17,19 209:17 221:16 287:12,13 302:11 315:12 332:9 334:9 335:5 billions (1) 172:8 billion-dollar (1) 119:11 billion-17 (1) 260:23 billion-760 (1) 260:23 bills (4) 137:8 206:14,15,16 binding (4) 69:23 174:4,5 321:13 bit (10) 6:6 13:23,23 14:22 17:2 29:11 99:11 125:8 257:14 283:25 bits (1) 112:20 blood (1) 341:16 Bloomer (28) 3:15 5:19,22 12:12 45:22 46:13,24 64:20 91:12,21 122:7 124:20 139:19,23 140:5 144:10 145:5 146:9 160:14 163:22 184:14 199:6,14 226:19 232:20 239:23 256:16 342:4 blush (1) 18:21 board (4) 216:5,7,9,9 Boies (3) 2:5 3:11 5:23 bonds (2)	201:11,12 book (17) 13:19 15:13 32:16 49:4,5,6 155:12,22 156:19 157:12,14 159:15,18 160:3,22 161:6 162:8 booking (1) 50:10 books (4) 13:5 25:16 149:20 155:10 borne (2) 57:19,20 borrow (3) 206:17 313:6 320:4 bottom (6) 51:22 130:3 200:16 200:17,22 217:9 bought (17) 13:12,22 14:8,9,12,19 15:2,6,14 67:12,19 95:11,13 96:18 112:14 214:12 215:22 bound (1) 43:24 box (3) 295:14 306:20,21 boxed (1) 51:7 boxes (1) 176:11 break (12) 6:16 46:14 47:12 91:11 139:18 145:6 262:21 283:24 298:25 299:17 306:11 338:6 bridge (7) 48:13,17,25 49:3,8,16 50:3 brief (4) 77:10 121:14 140:2,9 bring (3) 135:17 142:24 294:12 bringing (1) 13:5 broad (2) 125:9 126:3 Broadridge (9) 296:4,25 297:22 298:12,14 301:13 301:15 302:3	303:15 broke (2) 97:25 338:13 broken (1) 207:10 broker (3) 13:13 96:15 274:8 brokerage (4) 14:18 15:21 214:13 258:16 brokers (5) 14:11 125:5 168:20 170:5,9 broker-dealer (33) 31:16 56:8,13 62:2 67:10 68:8 79:16 94:13 96:3 97:8 101:17 102:25 106:5 132:23 151:8 154:16 169:25 214:7 259:3,6 263:13,17,20 271:6 271:9,18 272:14,17 272:20 273:12,24 309:2 339:16 broker-dealers (3) 241:18 242:23 255:17 broker-dealer's (1) 151:23 Brothers (11) 1:7 3:6 17:12 61:3 67:13 138:13 178:14 246:5 250:24 337:14 344:2 brought (5) 147:13 198:21,23 293:6,16 building (1) 195:11 buildings (1) 95:12 business (145) 9:6 10:21 12:5,18,19 13:13,14,16,24 14:2 14:10 15:21 16:16 17:5,12 19:11,22,24 19:25 21:3,24 24:23 24:25 25:2 58:23,25 59:2,5 61:9 67:10 68:8 84:4,6,8 85:18 86:8,16 90:19 95:23 96:8,13,14,18 99:25 101:17 102:3,5,8,11
--	---	---	--	---

Contains Highly Confidential Portions

Page 6

102:14,17 106:2,3,5 106:6 107:13 108:18,24 109:3 112:4,16,19,20 117:22,24 136:9 145:4 159:15,18,23 162:8,9 170:14 189:25 199:21,25 200:5,8,10,17,21 201:7,8,11,18 202:4 202:9,14,20,22,24 203:12,16,18 205:11,21 207:23 208:6,25 211:14 214:7,13 228:22 232:24 249:14,16 258:16,18 267:8,10 267:13,14 268:8,10 268:15,18,20,21,23 269:6,18,21 270:5 270:12,20 271:13 271:16,20,22 273:12 324:22 325:2,3,4,7,9,20,25 326:18,20,21 327:6 327:7 330:14 339:8 businesses (15) 14:8 95:10,11 96:16 97:5,5 112:15 170:10 201:2,16,19 201:24 202:18 204:18 258:21 businesspeople (1) 18:13 businessperson (1) 162:7 button (2) 162:20 163:18 buy (24) 14:16,17 20:2 67:3,4 67:5,5 74:4,5 91:7 93:18 96:14 114:15 117:23 155:13 156:22 162:10 169:14 210:10 214:4,7,14 215:15 216:10 buyer (8) 99:23 100:14 101:6 102:3 115:9 194:9 211:7,11 buyers (2) 100:17 101:13 buying (33)	13:18 16:21,22 38:8 38:11,18 67:19 74:4 94:8,13 95:10 96:12 112:19,19 116:8,22 117:21 166:18 209:11,12 212:20 212:23 214:5,25 215:4,10,16,18 216:11,13,15,18,19 C C (6) 3:3 4:2 224:21 226:11 226:13 233:4 calc (1) 268:15 calculate (1) 31:3 calculation (66) 10:3,20 31:10,11 129:13,25 244:4,7,8 244:10,24 253:21 253:25 264:16 265:11,16,20,22 266:11 267:4,7,13 267:22 268:6,25 269:8,12,25 271:7 271:15 289:17,22 291:22 292:15 293:5,14 294:3,7 295:4 297:25 303:18 307:14,19 309:11 312:12 317:9,14 318:24 319:17 322:13 323:19 324:7,10 325:7,8,24 326:5,6 326:9,23 327:9 329:3,8 331:10,18 339:7 calculations (10) 9:15 35:19 243:6 253:22,22 258:3 263:18 268:7 269:4 307:21 call (7) 34:23 134:20 135:24 161:12 192:8 276:22 278:12 called (7) 5:14 26:19 28:13 45:7 86:22 251:8 255:11 calling (1) 300:5	calls (16) 32:14 91:3 135:13,14 135:20,23 173:18 174:7 176:19 177:8 177:14 179:17 204:14 205:14,24 233:5 capable (1) 147:14 capacity (1) 296:24 capital (29) 5:24 13:24 21:12 24:18,19,20 27:17 27:21 43:13 94:11 94:12 95:17,18 98:9 98:10,10,12 102:24 121:8 224:21 253:21 255:13 256:5,6 301:12,16 301:20,22,25 capitalized (1) 203:17 Caputo (3) 103:18 104:6,14 care (8) 139:12 158:9,11,19 158:21 159:3,6 313:7 carried (1) 80:7 carries (1) 43:9 carry (2) 80:9,12 carving (1) 19:12 case (26) 1:7 14:18 17:7 25:4 30:7 34:24 35:2 41:13 53:13 60:4 77:10 82:4 95:16 110:12 112:8 153:24 168:18 176:23 193:13 206:20 224:10 238:12 269:22 272:3,6 344:2 cases (1) 99:21 cash (38) 41:20 45:2 90:25 91:4 133:22 167:16 179:2 181:3 182:15	201:22 202:8 220:17 221:2,4,12 221:12,12,14,17,18 221:20 223:5,7,10 223:11,11,14,19 236:13,22 237:9,25 238:13,22 275:5 287:13 288:24 302:9 categories (2) 200:25 230:21 category (2) 334:10,11 cause (1) 290:9 caused (1) 293:23 ceased (1) 39:24 cents (2) 197:24,25 certain (13) 14:8 85:10,11 94:10 95:10 96:19 121:6 151:4 218:23 237:16 284:22 285:6 292:18 certainly (8) 59:25 63:17 77:7 109:5 114:4 161:17 161:19 257:20 CERTIFICATE (1) 341:2 certification (1) 249:12 Certified (2) 2:10,10 certify (3) 341:8,14,18 CFTC (2) 9:23 127:22 CGSH33921 (2) 235:3 342:16 chair (1) 253:2 chaired (1) 255:13 chance (5) 147:8 184:5,19 185:7 235:8 change (18) 66:25 84:22 92:7 93:4 193:5 197:23 269:23 270:20	287:4,19,24 297:18 308:9,15 313:12 318:17 324:6 331:11 changed (2) 208:12 274:20 changes (3) 188:6 297:22,24 Chapter (3) 1:6 99:21 100:18 characterizes (1) 57:14 characterizing (1) 163:23 charge (4) 50:2 75:12,16 187:10 charged (5) 45:10,24 47:14 48:5 52:21 charging (6) 46:11 48:18 49:19 50:7,11 53:2 Charles (3) 13:24 15:4,17 Chase (37) 220:20 222:19 223:4 223:20,23,25 224:4 274:12 279:4 280:25 281:16,21 282:18,24 284:24 285:3,8 286:2,16,22 287:10,17 288:3,8 288:14,24 289:7,13 289:13,15 295:14 295:15,22 302:16 304:21 306:7 337:3 Chase's (1) 281:17 check (2) 19:16 261:20 Chicago (2) 77:23 78:13 Chris (2) 276:8 277:7 circumstance (4) 80:2 108:22 172:6 217:19 circumstances (30) 62:25 66:6,10 68:23 69:6 92:5,8,14,20 92:24 93:2,7 98:18 98:21 100:15 119:23 192:2 193:21,22 194:14
--	--	--	--	--

Contains Highly Confidential Portions

Page 7

<p>194:22,24 195:19 198:11,18 217:20 217:22 218:2,4,9 citations (1) 275:6 cite (3) 46:5 47:24 296:15 Civil (1) 341:21 claim (3) 334:21,21 337:24 claims (6) 55:2,4,10,21 331:7 337:22 clarification (7) 40:7 63:4 198:25 224:8 234:4 248:8 298:15 clarify (6) 160:14,15 242:8 247:6 330:9 344:6 Clark (2) 146:14 147:11 class (1) 207:9 classification (1) 292:7 classified (1) 298:21 clause (5) 43:8 225:13 226:9,14 231:21 clear (23) 19:25 85:17 160:12 174:20,23 216:12 216:14,16 225:9 226:16,22 231:2,3,6 231:11,12,14,20,21 234:10 277:14 300:20 326:16 clearance (5) 24:24 44:11 57:5 118:23 120:7 cleared (4) 19:10 38:6 170:8 173:6 clearer (2) 14:10 247:4 clearing (44) 20:4 27:16 29:4 36:7 37:6 43:9 44:16,21 61:4,10 75:5,13,17 76:5 89:13 96:17 108:18 125:5,5</p>	<p>166:25 168:20,21 170:5,5,14 173:3 175:6 179:3 181:5 182:4,19 191:12 199:18 200:11 201:7 212:3 220:19 222:17 231:24,25 232:3,4 311:21 320:14 clearly (5) 6:7 230:17,18,23 327:20 Cleary (4) 3:20 71:25 72:3,5 client (1) 103:25 clients (6) 18:22,23 132:13 250:15,17 274:8 close (42) 10:21 52:10 69:13 71:18,19 74:11 77:24 85:17,19,25 86:7,15 102:15,19 102:20 103:6,7,20 104:4,12,15 106:13 106:24 113:9 134:11 143:20 145:4 186:22 267:7 267:13 268:15 269:18,21 270:4,12 270:19 271:13,16 325:4,6 326:18 327:5 closed (17) 16:6 45:8 69:4,14 70:7 74:19 78:14 86:15 103:5 125:13 131:20 132:6,19 186:19 269:20 312:11 327:6 closely (2) 9:3,12 closeout (1) 78:2 close-out (1) 48:11 closing (19) 45:11,25 47:15 48:6 48:19 52:22 53:23 54:3,8,13 73:2,13 73:16 85:22 86:10 105:9 134:24 169:6 271:21</p>	<p>CLR (1) 1:24 CME (30) 9:4,17 76:8,11,17,24 107:4,5,12 125:12 125:16 170:8 179:9 179:22 180:6,7,14 180:21,23 181:19 181:25 183:18,20 188:17 189:9,13,13 190:18 191:8 192:16 CME's (1) 76:24 Code (1) 242:19 coded (1) 295:18 Codes (1) 344:5 coding (6) 292:5,6,14,23 293:9 296:13 collateral (29) 84:5 129:7 138:24 169:9,10,14,16,16 169:19,21,25 170:2 170:15,23 171:3,9 171:11 172:8 206:16 220:13,18 222:16 234:23 236:13,22 237:9 238:2,13,23 colleague (1) 246:25 collect (5) 54:7,19,23 320:22 321:19 collected (2) 54:2,15 collects (1) 87:22 College (1) 248:24 combination (1) 275:3 come (12) 25:21 46:10 168:22 171:4 187:9 197:6 239:25 262:11,13 294:11 332:6 334:15 comes (1) 332:7</p>	<p>comfortable (2) 27:22,24 coming (6) 40:4 251:20 311:20 331:2 335:3,6 commencement (1) 99:21 commingled (3) 42:14 60:12,21 commission (1) 202:25 committee (3) 4:5 255:13 256:5 commodity (1) 128:6 common (3) 205:4 273:21,23 communication (1) 288:19 communications (2) 269:16 288:17 companies (4) 16:25 18:11 59:13 337:19 company (8) 28:7,16 96:4 99:24 106:4 169:4,8 337:14 compensated (6) 114:5,9,11,14 177:21 197:11 compensation (6) 116:16,25 117:2 175:4 196:17 198:17 competitors (1) 214:18 complete (2) 105:19 298:9 completed (3) 294:5 339:3 341:22 completeness (1) 110:9 compliance (8) 10:8 241:21 243:24 244:20 248:6,15 253:14 320:23 complies (1) 114:17 complying (1) 20:14 comprised (2) 37:16 259:22 computation (1)</p>	<p>273:22 computes (1) 30:15 conceived (1) 16:5 concept (1) 201:5 concern (4) 27:16 41:19 94:14,16 concerned (9) 36:11,15 80:12 107:14 183:9,23 185:17 192:15 317:24 concerning (1) 8:13 concerns (4) 12:8 29:9 49:17 50:4 conclude (1) 148:18 concluded (1) 332:19 conclusion (11) 173:19 174:8 176:20 177:8,15 204:15 205:15,25 233:6 327:23 328:6 conditions (1) 136:14 conduct (1) 144:20 conducted (8) 59:12 189:8 202:22 218:6 301:19,24 336:18 338:14 conducting (2) 18:19 188:7 confidence (11) 33:15 34:10,13 179:11 180:24 182:5,8,12,22 183:10,12 confidential (19) 1:12,17 11:8 12:1,11 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1,2 28:9 250:18,19 confidentiality (1) 12:8 confirm (6) 165:22 236:11 237:24 241:25 305:22 329:22</p>
--	--	---	---	---

Contains Highly Confidential Portions

Page 8

<p>confirmed (1) 238:11</p> <p>conform (1) 344:6</p> <p>confused (2) 202:5 261:15</p> <p>connection (12) 43:4 62:18 161:3 203:12 205:11,20 207:23 208:25 211:14 232:22 247:2 299:21</p> <p>consider (14) 56:7,10 58:9 96:18,20 98:20 99:23 148:24 149:15 160:25 182:6 199:17 231:5 323:25</p> <p>consideration (6) 81:8,10,23 82:3 172:18 338:21</p> <p>considered (7) 152:17 153:4 202:3 208:6 224:7 259:3 307:23</p> <p>considering (2) 155:16 220:7</p> <p>consist (2) 17:23 162:3</p> <p>consisted (1) 16:14</p> <p>consistent (2) 220:25 221:11</p> <p>constitute (1) 129:19</p> <p>constitutes (1) 286:14</p> <p>construed (1) 204:4</p> <p>consultant (5) 250:12,13,25 252:8 253:5</p> <p>consulted (1) 20:19</p> <p>consulting (3) 250:21 251:5 252:21</p> <p>consumed (1) 76:23</p> <p>consummated (4) 67:10 70:6 138:13 320:20</p> <p>consummating (2) 123:12 208:13</p> <p>contain (1)</p>	<p>128:6</p> <p>contained (1) 165:7</p> <p>contains (1) 241:24</p> <p>contemplation (1) 104:11</p> <p>context (12) 14:15 27:13 83:19 99:12 122:17 123:5 123:6 127:25 179:8 206:8 220:12 222:11</p> <p>continue (4) 11:9 22:3 108:21 332:21</p> <p>continued (2) 100:21 314:16</p> <p>continues (3) 77:20 122:8 268:12</p> <p>contract (31) 70:5 149:24 198:22 209:20 210:12 246:3,12,20 247:11 247:19 311:2,4,6 312:10,18 313:11 313:15,18,21 314:5 315:3,20 317:7 318:10 323:4,7 326:17 327:4,11,13 328:2</p> <p>contracted (1) 317:5</p> <p>contracts (3) 116:21 173:8 247:22</p> <p>control (8) 280:25 283:14 284:4 284:13 307:8,23 308:12,17</p> <p>controls (1) 18:7</p> <p>Cont'd (3) 4:2 146:8 343:2</p> <p>conversation (2) 7:17 299:15</p> <p>conversations (2) 26:25 64:7</p> <p>conversion (1) 176:3</p> <p>convert (2) 25:10 176:3</p> <p>copied (4) 72:10,16 235:20 236:5</p>	<p>copy (4) 7:4 47:6 51:2 77:11</p> <p>corporation (3) 33:16 220:19 222:18</p> <p>corporations (2) 166:25 231:24</p> <p>correct (50) 8:18 21:19 35:20 40:6 118:13 143:2,6 186:6,16 207:19 212:18 221:23 226:8 227:7,8 232:8 236:8,9 243:15 248:21,25 259:19 260:8,10 264:5 271:12 272:5 274:10,13,14,16,21 285:18 289:10 292:11,12 302:11 308:19 309:13 314:22 315:21 316:13 329:3 332:10,13,14 338:18 339:11 340:4 344:7</p> <p>correctly (2) 23:7 94:25</p> <p>correctness (1) 262:17</p> <p>corresponding (3) 152:18 160:5,19</p> <p>cost (34) 31:18,25 34:18 35:12 36:18 37:7 45:10,24 47:14 48:6,19 52:22 53:12 78:15 85:11 85:19 86:9 120:18 121:19 122:22 124:3,3 126:8 132:17 140:12 142:7 185:18,22,23 186:25 187:8 188:5 188:12 190:7</p> <p>costs (9) 49:20 50:7 53:22 54:7 56:4 75:21 118:19 186:14,16</p> <p>counsel (16) 8:12 72:14 107:20 127:22 212:6 235:16 236:8 261:18,19 262:10 262:11,15,18 276:3 276:4 277:12</p>	<p>counsels (2) 235:15,17</p> <p>counterparties (4) 136:5,11 175:6 227:25</p> <p>counterparty (1) 313:6</p> <p>country (4) 17:10 97:8 137:14,15</p> <p>COUNTY (1) 341:4</p> <p>couple (5) 16:8 19:2,6 26:5 257:12</p> <p>course (13) 30:7 122:5 152:9 179:10,23 188:6 263:24 264:4 307:18 308:7 325:25 330:13 339:8</p> <p>courses (3) 249:10,11,13</p> <p>court (28) 1:2 5:9,11 56:19 101:3 103:3,12,19 103:23 104:21 105:9 175:10 241:11 311:3,5 312:2,21 313:11,16 313:17 314:4 315:22 318:6 322:9 322:10 323:16 324:3 325:17</p> <p>court's (2) 103:19 323:22</p> <p>court-approved (1) 56:18</p> <p>cover (15) 34:18 35:11 36:18 55:20 75:20 82:9,14 87:5 119:10 129:11 135:16 186:6 221:21 319:21,23</p> <p>covered (5) 33:13 75:14 131:10 144:2,5</p> <p>CPA (3) 249:12 254:22 255:2</p> <p>CPAs (2) 255:6,24</p> <p>Craig (1) 141:5</p> <p>created (1)</p>	<p>147:22</p> <p>credit (27) 19:16 56:9,11,12,14 56:20 57:19 58:9,15 135:25 136:4,12,16 138:20 285:8 290:17,20 291:21 292:15 293:8,10 307:24 329:13 334:15 335:3,6 336:7</p> <p>creditor (1) 55:2</p> <p>Creditors (3) 4:5 55:12,17</p> <p>credits (1) 331:20</p> <p>creditworthiness (2) 29:6 56:24</p> <p>creditworthy (1) 135:20</p> <p>critical (3) 104:22 105:5 284:7</p> <p>CRR (1) 1:24</p> <p>crumbling (1) 95:23</p> <p>crunch (2) 95:18,24</p> <p>CSE (1) 161:18</p> <p>currently (7) 55:20 246:2 250:2,3 334:5 336:23 338:17</p> <p>Custody (2) 291:10 342:23</p> <p>customer (151) 9:22 13:16 14:6 18:11 18:15 19:7,9,22,24 26:17 28:21 29:2 47:21 55:5,15,21 58:25 59:15 60:13 60:22 79:6,14 96:13 96:13,16 100:2 106:16,17 109:12 120:22 124:16,24 124:25 125:12,17 125:23 127:23 128:2,16,23 129:19 129:22 130:16 133:2,3,4,6,7,8,20 133:25 134:2,14,19 134:22 135:3,7,9,10</p>
--	--	---	---	--

Contains Highly Confidential Portions

Page 9

136:17 138:5 190:12,14,19,20,25 191:9,11,15 201:10 202:19,22 222:24 222:25 225:4,18,20 225:22 226:4,24 227:10,18 228:18 228:20,25 229:2,4 229:10,12,19,20 230:6 233:11,13 241:19,20,21 242:24 243:24,25 244:20,21 251:9 253:14,15 256:7 259:7 278:25 279:2 279:8 280:6,8 290:21 291:9,18 292:2,7 295:19 305:10,14 306:21 306:21,21 307:12 307:20 308:8 310:14,19 317:6,7 317:13 326:14 328:12,20 329:14 330:20 332:25 333:7 335:13,15,16 335:18,23,25 336:9 336:11,12,13 337:21,23 342:22 customers (95) 9:25 10:5,5,13,15 13:15 18:15,17 19:3 19:17 45:16 49:13 55:9,14 59:16,17,21 59:25 79:3,7 81:3,6 94:15,15,16 95:11 107:6 126:22,24,25 127:4 128:21 129:6 129:8,12,14 130:5,6 131:5,11,17 133:10 133:17,19,23 134:4 135:12,13,19,22 136:8,21,24 137:10 137:17,18,25 138:8 138:17,18,21 191:2 201:10 206:18 223:8 225:15 227:24 259:4 260:7 263:3,5,8,12 279:5 292:19 298:21 305:4,13 306:2,3,7 306:19,23 307:12 310:14 316:5 330:11,12,19,23	331:6,13 332:10,20 335:22 customer's (8) 130:20 133:13,14,16 134:6 138:3 139:13 259:12 customer-related (1) 24:25 C.F.R (1) 128:9 <hr/> D <hr/> D (337) 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1	152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1 258:1 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1 279:1 280:1 281:1 282:1 283:1 284:1 285:1 286:1 287:1 288:1 289:1 290:1 291:1 292:1 293:1 294:1 295:1 296:1 297:1 298:1 299:1 300:1 301:1 302:1 303:1 304:1 305:1 306:1 307:1 308:1 309:1 310:1 311:1 312:1 313:1	314:1 315:1 316:1 317:1 318:1 319:1 320:1 321:1 322:1 323:1 324:1 325:1 326:1 327:1 328:1 329:1 330:1 331:1 332:1 333:1 334:1 335:1 336:1 337:1 338:1 339:1 340:1 342:3 daily (6) 90:13 98:8,11 163:3,6 210:10 Daniel (18) 1:13 2:4 5:4,14 6:25 47:7 146:3 240:9,13 240:16 340:18 341:9 342:8,9,17,18 342:20 344:4 date (32) 7:3 47:9 50:22 90:11 121:11 144:13 173:2 178:9 219:9 235:4 240:11,14,17 261:9 265:14,17,18 265:22 266:6,11 267:19 271:3 291:12 297:9 310:10 312:23 313:14 315:20 317:23 318:15 338:23 344:3 dated (1) 297:4 dates (2) 13:7 83:15 DAVID (1) 3:24 day (82) 3:5 6:5 10:3,7,16 16:5 16:6 21:18 28:17 31:18 37:12 66:17 67:2 83:2 84:2,4,6,8 84:17 85:2,5,12,20 86:14,17,18 90:19 98:10 132:6,12,18 134:23,24 135:15 140:18 141:25 142:10 143:17 144:9 170:15 172:2 184:9 185:3,17,25 187:13,20 188:7,19 208:12 239:3 266:21 267:2,2,14	267:24 268:8,10,18 268:20,21,23 269:10,16,16,21 271:20,21,22 281:19 295:20 316:21 324:22 325:2,3,8,9,20 326:21 332:2 340:20 341:24 days (9) 66:17,19,20 86:6 104:23 140:19 143:5 169:7 210:22 day's (1) 85:13 deal (44) 16:5 28:20 33:8 63:2 65:24 66:6,10 68:3 69:7,22,24 70:4,7 72:20 73:2,7,8,25 74:6,10 98:22 104:22 105:8,20 113:9 114:5,15 137:22 139:6 168:6 171:24 177:21 197:11 208:13 210:23 214:22 217:21,25 221:2,5 221:18,19,23 222:15 dealing (1) 23:23 deals (1) 68:5 Dean (2) 254:8,11 debit (29) 293:4,10,24 310:5 311:10 312:9 313:5 314:2,13 315:17 316:2,4 317:2,15,19 317:21 318:8 319:2 319:9 320:3,16,21 321:15,16,19 324:16 326:14 328:12 329:13 debited (2) 330:11,25 debts (3) 320:2 330:24 331:19 Debtors (1) 1:9 decide (10) 63:17 67:3,4 68:17
---	---	--	---	---

Contains Highly Confidential Portions

Page 10

<p>158:25 177:17 189:20 197:24 265:21 313:17 decided (15) 63:16 77:24 98:25 99:2 119:21 123:11 131:5,16 155:13 171:5 191:23 274:15 312:21 334:18 335:10 decision (4) 36:15 106:6 194:21 198:16 decisions (1) 219:3 declaration (17) 46:4,9,11 47:7,24 48:4 83:25 141:5 146:13,15,21 220:2 297:4,7,17 342:9,24 declarations (1) 219:16 decreased (1) 143:8 deduction (1) 51:14 deemed (1) 53:4 deeper (1) 17:3 deficit (17) 31:7 84:7 128:7,14,23 129:4,5,6 130:4 131:6,21 132:10 133:21 134:2,7,19 135:8 deficits (5) 129:11,12,18 130:15 133:8 define (5) 112:12 208:10 209:18 233:21 259:24 defined (8) 200:17 203:22 205:12 205:21 220:18 230:17,18 259:8 defines (2) 43:12 233:22 definitely (1) 305:20 definition (13) 200:18 201:3 202:24 203:6,18 204:8,9,12 217:14 224:22</p>	<p>231:3,4,15 degree (1) 249:7 delay (1) 147:21 deliver (3) 89:16,19 91:6 delivered (1) 91:2 deliveries (1) 288:14 delivery (3) 91:8 121:9 319:5 Deloitte (16) 7:20 65:10,15,17,19 65:22 255:20 262:12,13 276:5,6,7 276:14,22 329:19 332:3 denominated (1) 71:15 denote (3) 175:18,20,23 denoted (2) 176:7,15 depend (4) 81:13,17 134:14,17 dependent (3) 136:4,16 188:13 depletion (4) 107:23 109:19 110:19 111:11 deponent (1) 341:19 deposed (1) 6:2 deposit (20) 128:17 173:3 224:3 247:20 272:8,23,24 273:14 290:11,14 308:22 309:15,18 310:22 311:9 319:16 339:9,9,22 339:25 deposited (9) 129:22 130:7 179:3,4 181:4,5 182:4,16,19 deposition (34) 1:13 2:4 5:4 7:15 50:16,20,24 51:8 52:18 53:17 65:14 70:15 71:2 83:8 146:18 178:7 219:7 219:10,12,20</p>	<p>220:11 240:2 244:11 246:7 247:24 303:24 340:9 341:10,11,21 342:10,13,14 344:3 depositions (2) 219:16,18 depository (1) 49:10 deposits (9) 33:14 173:4,14 174:14 176:13,16 263:18 322:12 323:18 derivative (3) 152:19 155:12,22 derivatives (71) 7:6,12 8:13,23 23:20 24:15 70:21 97:23 147:2 150:19 151:3 151:14,21 152:8,10 152:11,13,16 153:6 153:12,17,19 155:4 155:5,11,14,17,20 155:23 156:4,5,10 156:14,18 157:6,11 157:21,21 158:4,6 158:13,14 162:14 165:8,11 167:17,21 169:5 170:6 172:4 199:19,21 200:4,7 200:10,24 201:6,13 202:2,13 212:4 213:22 224:23,25 227:24 231:25 233:9,23 234:7,17 251:7 derived (1) 206:13 describe (10) 8:20 9:21 12:2 16:13 26:12 27:3 38:17 42:5 251:21 252:5 described (6) 27:5 39:15 98:18 201:2 231:8 280:5 describes (2) 83:20 280:6 describing (5) 26:10 51:24 59:11 193:22 242:5 designate (1) 12:10 designated (3)</p>	<p>1:16 11:8 279:4 desire (1) 120:24 desired (1) 289:13 desk (4) 21:10 164:4,22 165:18 despite (3) 168:13 267:23 272:25 determination (1) 196:2 determine (43) 10:6 16:17 18:15 23:17 31:22 36:20 56:5 59:16 86:9,12 93:16 97:2 98:13,15 105:9 142:18 148:23 156:2,21,25 157:13 159:25 160:21 161:24 162:7,8 163:18 166:2 181:11 187:7 197:20 214:25 269:25 278:24 280:4 287:25 288:6 301:25 305:10 314:4 318:12 323:21 333:22 determined (8) 20:18 60:2 62:17 310:12 312:6 316:23 318:23 332:24 determines (2) 315:23 318:6 determining (7) 155:18 162:2 166:19 175:3 265:10 309:10 323:9 devoted (1) 257:8 difference (4) 10:22 135:11 187:25 188:5 different (23) 10:14 14:9 16:23,24 18:8 99:3 100:14 154:22 161:9,9 170:4 189:4 200:2 201:6 209:24 217:25 218:13 222:23 230:21 231:7 270:11</p>	<p>277:19 316:13 differentiation (1) 202:7 differently (4) 217:25 218:8,14 231:8 difficult (2) 66:16 86:12 difficulties (2) 26:24 147:22 difficulty (1) 62:13 dig (1) 319:25 diligence (31) 12:19,24,24 16:11,14 17:3,23 25:12 59:13 67:23 68:17 69:15 74:3 93:12,24 94:5 94:10 95:6 104:17 105:15 112:25 136:6 166:4,6,7,9 166:14 167:10 168:14 214:15 215:13 direct (3) 51:5 127:8 184:4 directed (2) 17:2 297:23 directing (2) 122:11 297:22 direction (1) 278:4 directly (1) 53:3 Director (1) 250:8 directors (3) 216:5,7,10 directs (1) 122:7 discernible (1) 96:12 disclosure (1) 24:21 discrepancies (2) 296:12 303:5 discrete (1) 149:15 discuss (4) 191:17 240:25 330:4 332:12 discussed (16) 19:21 20:7 194:18</p>
---	--	--	--	--

Contains Highly Confidential Portions

Page 11

<p>221:6 238:24 252:22 256:15 260:14 262:4 292:23 295:16 298:8 301:5 303:6 334:10 339:6 discusses (2) 292:5 332:9 discussing (4) 52:3 140:13 212:7 302:23 discussion (4) 192:22 274:3 306:12 308:22 discussions (5) 192:20 276:22 289:7 309:21 334:17 disparity (1) 105:21 disposing (1) 81:19 dispute (2) 53:21 246:2 distinction (2) 107:7,12 DISTRICT (1) 1:3 dive (1) 17:3 divided (1) 333:25 Division (4) 255:7,10,11 274:7 document (56) 33:22 39:16 42:25 46:15 47:3,10 70:8 70:12,14,19 77:6,8 83:5,14 99:13 103:16 113:21 122:3,8 127:11,18 140:25 141:4 146:12 147:9 172:15 177:16 204:21 205:14,24 206:4 207:17 219:5 222:13 224:6 226:5 226:18 233:7 234:24 235:2,7,9 279:9,14 280:3,7 297:13 300:7 303:23 304:6,7 305:2,6,9 330:2 342:15 documentation (2)</p>	<p>172:7 285:25 documents (17) 7:24 8:6 77:5 169:2 176:4 237:19 247:3 275:14,18 281:4,7,8 281:14,15 333:20 334:14,19 doing (28) 20:25 21:2,5,11,15 26:6 27:19,20 29:12 68:14 93:15 95:6 112:25 118:22 161:8 189:14,25 190:11,13,20 191:23 219:3 243:14 250:16,20 278:7,8 295:5 dollar (21) 114:6,6,9,9 123:15,15 177:21,22 197:3,3 197:11,12,25,25 198:2,2,7,7 210:15 210:16,19 dollars (11) 41:3,5 77:4 114:20 115:15,17 117:13 141:14 172:8 209:17 221:16 dollar's (1) 196:18 dollar-for-dollar (5) 116:11,15 117:2 196:17 197:22 doubt (4) 53:22 78:9 147:17 148:4 downside (2) 81:20 117:7 downsizing (1) 249:25 dramatically (1) 142:10 drastically (2) 141:2 208:12 drawing (1) 107:7 drawn (1) 107:12 Drexel (2) 95:25 96:2 drop (2) 134:23 135:2 dropped (1) 141:24</p>	<p>DTC (1) 233:12 due (35) 12:19,24,24 16:11,14 17:3,23 25:12 59:12 67:22 68:16 69:15 74:3 87:23 90:21 93:12,24 94:5,10 95:6 104:17 105:15 112:25 136:6 166:4 166:6,7,9,14 167:10 167:25 168:13 214:15 215:13 217:19 duly (2) 5:15 341:11 duplicative (1) 154:17 duties (2) 172:25 254:12 Dziemian (5) 46:4 47:8,24 53:9 342:9 Dziemian's (1) 46:9</p> <hr/> <p>E</p> <hr/> <p>E (4) 3:3,3 4:2,2 earlier (24) 59:11 65:13 72:18 82:12 100:19 106:11 109:17 110:16 140:8,13 192:21 207:14 217:6 221:6 232:19 237:2 262:4 301:11 309:7,22 315:6 321:25 325:23 339:6 earmark (1) 163:11 earn (1) 112:16 earnings (1) 108:18 ease (2) 172:2 280:14 easier (3) 261:22 291:6 301:3 easily (2) 6:10 98:13 East (1) 3:7</p>	<p>economic (1) 221:19 Ed (2) 71:25 72:2 editions (1) 255:22 education (3) 249:4,6,17 effect (4) 48:11 82:19 136:22 168:24 effected (2) 322:11 323:17 effective (9) 90:10 148:20,23,25 149:16 150:3 173:2 313:21 314:5 effectively (7) 147:25 312:15 317:16 323:2 325:3,20 330:19 effectually (1) 176:2 efficiently (1) 171:13 effort (4) 262:21 287:25 293:12 293:19 efforts (1) 288:6 either (17) 45:6 74:6,18 124:24 126:6 189:19 190:23 210:18 211:20 220:14 238:20 275:7 277:7 280:20 315:17 319:3 322:6 electronic (2) 282:6 284:3 electronically (1) 288:12 element (1) 217:13 eliminate (1) 81:3 eliminated (2) 82:22 85:6 eliminating (2) 80:14,21 EMANUEL (1) 4:4 emphasize (1) 296:8</p>	<p>employed (1) 278:3 employee (2) 298:3 329:22 employees (15) 277:9,11,17,19 278:6 278:14 296:18,22 296:22 297:24,25 298:2,5 301:22 308:5 enable (1) 163:25 encompass (4) 207:5 224:13 232:15 233:2 encompassed (3) 201:18 232:15 233:3 encompasses (1) 43:16 encountering (1) 96:8 ended (1) 95:10 Enforce (1) 121:8 enforced (2) 289:24 290:3 engaged (2) 294:20,25 ensure (2) 31:6,11 enter (3) 94:2 171:15 216:25 entered (7) 62:5 160:10 166:16 212:24 215:14 266:7 269:9 entering (7) 61:22 266:5,12,20 267:5,23 268:12 entire (6) 18:25 19:5 150:11 214:7 233:10 323:13 entirely (2) 82:22 278:4 entities (8) 16:22,24,25 37:5 49:3 54:18 105:22 170:11 entitled (5) 129:20 133:2 237:8 257:16 322:18 entity (19)</p>
---	---	--	--	--

Contains Highly Confidential Portions

Page 12

<p>14:7,9,9,19 15:2,5 15:14,16 16:21 25:17 27:15 94:9,11 94:19 95:5 99:3 169:12,22 171:14 environment (6) 66:13,15 138:2,8,10 138:16 equal (1) 337:15 equating (2) 282:11 283:7 equation (1) 117:18 equities (11) 14:2 48:12 97:12,17 97:22 98:2 157:2 162:14 187:20 201:22 202:8 equity (13) 39:3,5 94:24 129:10 149:9 151:4,12,22 158:6,14 201:8 233:12 285:9 equivalent (1) 48:18 Eric (2) 4:9 146:14 error (2) 274:15 292:10 errors (8) 292:5,6,14,24 293:9 293:23 296:13 344:7 ESQ (10) 3:9,15,16,17,18,24 4:9,15,16,17 Essentially (1) 315:19 established (1) 270:18 estate (24) 45:10,24 47:14 48:5 48:18 49:20 50:7 52:22 54:4,7 55:10 55:15,18,20 56:4,21 56:23 57:4 79:12 81:4 246:5 331:7 337:22 338:2 et (1) 1:8 event (12) 31:6 60:6 75:9,25 121:20 122:23</p>	<p>131:22 152:17 156:4 165:10 186:4 326:4 events (5) 77:22 269:15 293:3 293:12,20 eventually (6) 53:3 262:14 312:21 313:17 319:25 338:2 everybody (1) 311:12 everybody's (1) 120:24 everything's (1) 253:3 evidence (25) 69:11 108:4 130:23 135:6 142:13 143:16 150:10 153:15 155:7 156:7 168:17 172:10 181:20 182:25 187:23 189:23 191:4 193:8 214:10 238:19 239:18 265:24 287:6 289:23 322:16 Evidently (1) 215:22 ex (1) 89:16 exact (1) 260:22 exactly (7) 16:9 17:14 41:3 70:17 98:2 257:13 260:17 Examination (5) 5:18 146:8 240:21 342:4,5 examined (2) 5:16 247:21 example (11) 114:19 121:14 122:17 122:20 125:10 149:3 151:25 175:10 179:9 181:19 310:8 exceed (1) 187:8 exceeded (1) 128:16 exceeds (2) 31:18 187:2</p>	<p>excess (13) 28:16 31:16 35:25 36:7 84:7 135:15 221:2,16 234:21,23 263:2,14,21 exchange (12) 76:18 77:23,25 78:14 108:2 109:22 110:22 111:14 119:4,25 198:12 202:17 exchanges (6) 135:18 207:13 212:8 212:12 231:14,23 exchange-traded (64) 7:5,12 8:13,22 9:2 23:5,6,20 24:15 70:21 97:23 147:2 150:19 151:3,14,21 152:7,10,13,16,22 152:25 153:11,19 154:2 155:4,10,14 155:17,23 156:3,10 156:14,18 157:6,11 157:17,20 158:6,13 158:20 162:13 165:2,7,12 167:17 167:21 169:5 170:6 172:4 199:19,21 200:4,7,9,24 201:5 201:13 202:2,13 212:4 213:22 224:23 233:9 exclude (2) 209:8,12 excluded (12) 203:13 207:24 209:2 209:7 210:6 211:2,4 211:15,17,20,22,22 excluding (6) 33:13 117:17 203:12 207:24 209:2 211:15 exclusive (3) 263:3,5,12 excuse (8) 65:12 99:17 101:10 101:20 229:15 230:14 264:23,23 execute (1) 215:9 executed (3) 69:17,20 215:3 execution (1)</p>	<p>201:8 executives (1) 93:19 exercise (3) 18:19 45:3 89:17 exercised (2) 89:11 91:3 exercises (2) 173:8,9 exhibit (77) 6:24,25 7:4 42:23,24 47:6,7,11 50:18,19 50:20 70:9 77:7 83:4,13,14,25 99:5 106:19,20 121:2,3 127:6 140:2 141:6,7 146:13 172:15,16 178:6,6,7 200:14 217:7 219:6,7 224:6 234:25 235:2 240:9 240:12,15 248:17 248:17,18 267:17 267:18 291:4,8,9 296:14 297:3,7 299:24 300:3,12,14 300:21,25 301:7 302:23 304:13,16 304:18 342:8,9,10 342:11,13,14,15,17 342:18,20,21,22,24 exhibits (4) 241:2 248:3 252:14 342:7 exigencies (1) 218:19 exist (2) 39:20 167:25 existed (2) 57:15 218:4 expect (14) 56:3 77:7 108:16 109:2 112:9 114:13 115:4,8,11 116:9 209:3 210:8 238:10 239:7 expectation (1) 108:22 expected (9) 33:12,19,23 34:3,4,6 34:8 213:13 237:5 expense (3) 50:14 51:13,13 expenses (1) 56:2</p>	<p>experience (12) 20:21 36:5 74:13,22 98:4 112:2,14 200:25 241:15 243:14 245:23 253:12 experienced (2) 29:20,21 expert (36) 6:25 7:4 8:12,17,22 24:5,9 30:18,25 47:13 55:3,5 70:20 96:22 100:8 139:24 146:24 159:13 193:19 195:16 242:4,11,15,19,25 244:2,22,25 251:4,6 253:6 256:9,13 309:22 322:17 342:8 expertise (2) 26:11 79:24 expiration (4) 87:15,23 90:11 144:18 expirations (1) 88:4 expiring (3) 86:23 87:2 88:21 explain (2) 114:8 253:11 explained (2) 59:14 171:19 explaining (1) 123:8 exposed (2) 87:9 134:25 exposure (32) 80:7,9,12,14,18,22,23 81:3,8,9,21,25 82:2 82:21 83:3 85:6 86:5 87:6 119:5 126:18 131:23 132:5,8 134:10,13 142:15 145:4 154:24 156:3 161:14 165:20 212:10 exposures (3) 82:14 86:14 168:2 express (1) 7:9 expressed (6) 41:19 69:24 99:16</p>
---	--	---	--	--

Contains Highly Confidential Portions

Page 13

101:19 116:21 276:25 extend (2) 56:12,14 extent (8) 28:10 36:17 51:18 131:23 156:2 221:20 276:13,21 extra (7) 18:23,24 41:5 46:15 116:9,11 281:15 extraordinary (1) 217:20 extrapolation (1) 86:2 extreme (1) 35:18 extremely (1) 96:20 e-mail (19) 36:4 70:11,18 71:22 72:24 73:4 127:6,7 192:21 212:5 235:6 235:11,19 236:5,10 236:20,25 237:6,24 e-mails (3) 63:5 72:10 322:24	155:7 156:7 172:10 182:25 187:23 189:23 191:4 193:8 195:18 197:17 198:18 214:10 265:24 276:16 277:6 287:6 294:9 322:16 344:6 factual (1) 46:5 fair (13) 12:15 24:4 39:24 44:15 63:8 81:15 134:24 153:9 154:25 157:25 194:12 196:15 204:11 fairly (4) 93:11,21 144:25 231:20 fall (3) 55:9 200:25 202:23 familiar (17) 18:9 23:2 32:25 146:15 151:7 178:12 219:12 241:16 242:22 243:23 244:18 245:4,9,12,18,21 321:22 familiarity (2) 26:13 138:22 far (10) 9:9,9 17:19 18:21 20:7 31:13 80:11 93:10 174:23 317:24 FARA (1) 4:17 Fargo (3) 260:3,7,13 fashion (1) 101:2 Fast (1) 220:3 fathom (1) 215:15 FCM (2) 17:10 129:4 fear (4) 184:17 185:5,10,13 February (4) 8:14,15,16 241:11 fed (11)	40:11,16,23,25 41:13 41:20 100:18,20 244:3,23 331:17 Federal (1) 341:20 feed (3) 329:2,7 331:10 feel (5) 31:12 51:18 105:14 105:15 122:5 fees (1) 284:22 FID (10) 274:4,9 278:18 280:5 285:17,21 299:21 300:15 304:18 306:4 fifth (1) 48:10 figure (1) 215:21 figures (1) 294:9 file (2) 98:16 272:21 filed (11) 94:23 102:23 241:5 241:11 251:11 253:20 282:22,22 294:13 295:8 337:22 filing (4) 253:23 258:25 272:19 335:19 Fin (2) 243:7 253:16 final (4) 18:21 70:5 237:19 268:15 finalize (4) 25:8,11,12,13 finalized (3) 319:17 324:25 326:9 finally (1) 270:12 finance (1) 13:4 financial (37) 7:18,19 9:18 12:21,25 16:15,19 18:5 21:14 24:21 26:14,23 27:22 28:6 58:3 62:12 65:17 102:22 241:17 242:22	253:17,19 255:7,8 255:10,10 262:5,8 275:11,24 276:2,5 281:5 294:20 304:23 329:18 338:20 find (11) 63:12 101:5,13 102:3 111:21 155:13 194:9 277:5 291:6 300:25 328:7 findings (1) 338:20 finds (1) 325:17 fine (5) 51:4,6 91:13 199:6 276:19 finish (7) 6:7 54:11 184:15 324:9 327:15,18,24 finished (4) 14:23 230:15 281:24 339:5 FINRA (4) 291:14 319:4,20 328:14 firm (41) 9:15,24 12:23 14:13 18:6 21:25 26:18,22 27:4,19 28:21 29:2 29:12 31:13,15 42:15 44:18 60:13 60:17 75:13 97:3,5 97:6 98:17 101:11 112:22 114:17 117:19 124:9 128:18 129:4,15,17 131:9 135:15 161:19 164:23 188:25 218:22 235:25 320:14 firms (14) 9:8,16 24:10 26:21 29:9 36:11,12 70:3 76:15 93:15,20 161:7,16 243:5 firm's (5) 9:15 24:18,20 26:14 42:14 first (38) 6:23 9:19 15:25 16:5 18:21 19:21 25:21 25:23 43:7,8 46:14	55:14 61:23 65:15 71:5 91:23 92:4 99:10 100:10 101:11 102:7 127:7 127:9,12,14,15 224:21 231:21 235:11 236:10 248:16,17,17 250:20 280:10 297:5 334:10 337:2 firsthand (1) 76:13 fit (2) 162:10 166:19 five (5) 66:17 139:19 199:5 210:22 246:23 five-minute (2) 91:11 338:6 fixed (6) 39:3 158:14 201:21 202:8 245:18 274:7 Flexner (3) 2:6 3:11 5:23 Floor (1) 4:7 flow-through (1) 149:10 fluent (1) 337:18 Focus (3) 94:23 253:18,23 focusing (1) 232:21 follow (2) 204:13 289:14 followed (1) 306:10 following (13) 31:18 85:5,12 102:15 103:23 134:24 142:10 204:6 271:21 272:4 339:10,12,17 follows (4) 5:17 146:4 204:5 205:7 footnote (2) 32:20,22 force (2) 83:18 289:21 forcing (1) 104:15 foreign (1)
--	--	--	---	---

Contains Highly Confidential Portions

Page 14

<p>170:10 forensic (1) 245:23 forever (1) 33:5 forgave (1) 38:21 form (236) 10:11 14:20 16:7 17:13,24 21:8 23:11 23:21 24:7 25:7,18 28:8,18 29:7,18 30:8,17 31:9,20 32:10 33:21 34:20 35:4 37:2 39:7 40:5 40:17,24 41:15 42:8 45:5 48:20 49:22 53:15 54:20 55:13 55:22 56:16 57:7,17 58:6,11 59:23 61:5 62:9 64:2,13 65:6 65:11 67:11 68:10 69:10,25 73:3 74:17 75:10 77:2 78:16,20 78:24 79:9,17 80:3 80:8,15 81:5,16,24 82:24 85:15 86:11 88:13,25 89:14,25 90:24 94:3,21 95:8 96:9,24 97:16 98:7 98:23 104:24 105:11 108:3 109:13 112:6,13 113:10 115:2,21 116:17 117:4,11 118:8,20 119:6,16 120:4,16 123:18 124:17 126:15 129:23 130:9,13,21 132:3 135:5 136:3 136:15 138:15 139:9 140:20 142:12 143:15 144:8,22 148:12,21 149:5 150:9 151:10 151:16 152:20 153:14,21 154:4 155:6 156:6 157:4 158:2,17 159:9 160:11 161:4 162:5 162:23 163:10,20 166:10 167:2,13 170:17 172:9 173:17 174:7,18,22</p>	<p>175:14,22 176:9,19 177:7 179:17 182:9 182:24 183:25 185:8,21 186:8 187:14,22 188:22 192:4 193:7 194:15 195:2,21 196:10,23 197:14 198:14 199:22 201:4 202:15 204:14 205:13,23 208:2,20 209:9 211:5 213:2 214:9 215:5 217:23 218:21 222:10 223:2 224:2,16 225:5 226:7 227:2 227:19 228:12 229:13 231:9 232:17 233:5 234:19 237:11 239:12 243:17 244:6 246:13 247:16 251:24 257:10 259:10 265:23 266:13 267:25 270:7,21 272:11 273:18 287:5 289:2,11 294:22 308:10 309:16 310:11 312:3 313:13 317:12 318:20 321:4 322:15 325:10,14 329:5 formal (1) 249:3 former (1) 246:4 forming (1) 224:9 formula (62) 9:11 26:17 31:5 243:20 244:12 253:21 259:14 260:6 265:18 290:18,21 293:24 296:11 297:19 303:5 307:25 308:13,15 310:5,15 310:18,21,24 311:11,19,20,23 312:9,17 313:2,8 314:3,14 315:13,17 316:2,11,12 317:3</p>	<p>317:16,20 318:9 319:2,9,19 320:17 320:21 321:17 324:17 325:15 326:15 329:15 331:20 332:2 333:2 333:4 334:3 335:4,4 335:6 336:7 338:25 formulates (1) 32:9 forth (6) 69:24 176:2 242:11 248:2 297:20 341:10 forward (3) 168:10 242:15,19 forwarding (1) 220:3 found (6) 294:15 299:17 302:24 333:16 336:6 338:24 foundation (1) 246:8 four (10) 29:8 93:9 97:8 123:7 143:5 246:6 256:10 256:24 260:11 262:3 fourth (1) 48:10 fraction (1) 132:19 free (5) 82:11 111:6 122:5 295:14 307:3 Friday (30) 10:20,22 35:22 143:20 220:5,14 268:7,15,18,21,23 269:5,5,18 270:5 271:12,13,17,21 272:7 273:13 288:4 325:24 326:2,19,23 327:6,9 339:7 340:3 Friday's (1) 86:7 front (9) 50:23 198:23 241:2 248:3 253:7 256:14 280:21 301:8 313:16 FTC (1) 9:4</p>	<p>fulfill (1) 27:17 fulfilling (2) 126:25 128:21 full (10) 77:18 91:23 92:4 127:9,14 131:23 134:25 151:15 155:19 200:18 fully (13) 133:9 149:20,21,24 150:5 153:25 155:3 159:19,23,24 241:16 310:20 326:15 function (1) 251:3 Fund (1) 173:3 funding (1) 309:4 funds (6) 179:3 181:5 182:4,19 316:8,10 further (13) 13:23 121:4 146:4 234:3 330:9 336:18 337:4,8 338:15 340:6 341:14,18 342:11 futures (22) 9:2,5,23 10:14 12:5 12:18,18 20:22 24:24 45:16 96:17 112:24 128:2,24 129:3 136:9 138:5 201:7 202:20,22,24 258:18 futures-related (2) 9:9 11:5 fuzzy (3) 13:7,23 258:17</p>	<p>general (18) 24:22,23 26:10,18 33:3,5 54:17,24 55:4,11,16,18 56:21 63:6 96:25 126:4 204:4 307:11 generally (9) 8:20 25:4 27:3 32:8 40:9 42:5 56:7 112:3 176:24 generate (1) 164:10 getting (22) 82:6 95:19,20 112:9 117:6 155:2 159:8 166:24 167:4,4,6,6 167:11,23 168:7,8 169:10,20 172:8 210:6 215:23,24 Giddens (3) 72:10,13 236:5 give (31) 8:22 10:15 17:4 25:15 40:14,19 45:11 82:11 91:25 120:13 120:15 125:10 126:6 151:25 158:8 164:18 186:11,12 186:18 195:15 198:8 204:20 239:23 256:23 261:23 264:19 291:5 307:8 313:6 320:17,18 given (28) 12:7 28:17 30:6 81:14 142:8 170:15 179:12 180:25 183:13 196:4 204:9 211:17 213:9,11,12 225:15 262:14 311:21,25 312:15 313:3,10 314:11 315:11 316:3 318:23 320:15 341:12 gives (1) 133:25 giving (3) 114:10,13 197:17 gladly (1) 319:25 glanced (1) 8:7</p>
--	--	--	---	--

Contains Highly Confidential Portions

Page 15

<p>go (37) 6:4,5 43:21 64:15 73:6,7 88:8 91:7 93:18 105:3,17 106:10 111:8 132:15 138:19 143:24 155:18 167:3 168:10 177:18 192:10 208:14 210:9 221:2 240:3 256:21 261:23 262:21 269:19 276:12 277:15 299:6 309:7 311:19 313:7 320:9 333:2</p> <p>goal (5) 36:24 37:4 150:3,5 191:10</p> <p>goes (9) 13:22 99:22 136:18 138:23 141:17 174:24 265:18 290:20 334:3</p> <p>going (78) 6:23 25:9 36:18 46:19 47:4 48:22 50:18 53:7 58:17 59:3 61:9 66:12 69:15,19 73:10,21 77:9 79:2 91:9,16 95:15 102:7 102:10 109:4,9 112:5 118:5,25 127:23 138:18,19 138:25 141:2 143:24 145:10 165:10 169:6,20 174:14 176:2,5,6 178:5 181:18 182:23 184:3 185:14 187:8 190:22 192:24 196:7,9,13 199:9 212:11 216:10 240:7 246:14 247:17 251:23 253:10 254:24 258:23 267:16 273:12 277:16 281:6 292:4 297:3 297:21 299:9 310:13 311:11 313:16 327:19,25 338:8 340:10</p>	<p>good (41) 5:20,21 46:14 56:9,10 77:9 81:9,11 91:11 91:12 93:17 95:22 108:10 110:4 134:18 139:17 145:6 146:10,11 158:21 172:18 199:5,15,16 240:23 241:13 243:3 256:13 283:13 284:4,13 307:23 308:12,16 310:5 311:10 312:16,25 314:13 317:17 320:16</p> <p>goodwill (1) 51:14</p> <p>Gotshal (1) 235:22</p> <p>gotten (1) 186:20</p> <p>Gottlieb (4) 3:20 72:2,4,5</p> <p>governing (2) 241:17 242:22</p> <p>government (2) 97:20,21</p> <p>great (2) 46:17 299:3</p> <p>greater (1) 136:12</p> <p>GREEN (6) 3:9 30:10 50:9 57:8 182:10 192:5</p> <p>ground (1) 6:5</p> <p>group (5) 20:17,24 236:11 254:8,15</p> <p>groups (1) 16:18</p> <p>guarantee (1) 82:13</p> <p>guaranteed (1) 31:6</p> <p>guess (24) 23:15 32:11,15 35:21 47:20 74:4 85:23 87:7 98:24 108:5,9 108:25 109:24 110:3,23 117:15 155:21 156:21 177:2 179:19</p>	<p>191:10 230:25 280:21 308:15</p> <p>guessing (1) 237:20</p> <p>guide (1) 255:16</p> <p>gun (4) 63:19 72:21 73:9,24</p> <hr/> <p>H</p> <hr/> <p>haircut (1) 21:12</p> <p>half (1) 198:2</p> <p>halfway (1) 298:24</p> <p>HAMILTON (1) 3:20</p> <p>hand (1) 341:24</p> <p>Handbook (1) 291:14</p> <p>handing (1) 178:5</p> <p>handling (4) 241:20 243:24 244:19 253:13</p> <p>hands (1) 297:5</p> <p>happen (8) 31:23 32:7,12 104:3 171:3 183:24 185:17 270:19</p> <p>happened (23) 28:16 32:4 60:6,9 61:15 67:21 78:18 78:19 88:10 93:20 93:21 96:2 100:3,23 102:19 131:4,14 153:23 174:2 193:10 265:17 315:23 326:4</p> <p>happening (13) 32:5 63:7 64:5 66:14 92:10,17,22 136:22 174:24 191:17,18 207:11 208:23</p> <p>happens (1) 105:25</p> <p>happy (2) 6:21 304:9</p> <p>Harbeck (1) 72:16</p> <p>hard (1)</p>	<p>327:22</p> <p>Harris (2) 276:8 277:7</p> <p>HASSAN (1) 4:16</p> <p>head (4) 63:19 72:22 73:9,24</p> <p>hear (2) 62:7 287:8</p> <p>heard (6) 34:22 36:3 77:3 222:5 320:6 321:22</p> <p>hearing (9) 77:11,15,19 99:6 101:4 104:4,20 217:9 220:15</p> <p>HEATHER (1) 3:18</p> <p>hedge (25) 148:25 149:3,12,16 149:16,20,21,24 150:4,5,6,8,11,14 152:5,7,11,14 153:4 154:14,21 158:15 158:22 159:3 165:18</p> <p>hedged (17) 151:4,22 152:2,4 153:18,25 155:3,19 159:16,19,19,23,24 161:14 164:11,17 165:17</p> <p>hedges (5) 4:4 150:12 154:17 159:25 160:21</p> <p>hedging (13) 150:21 152:23 153:3 154:9,11,20,23 155:11 156:11,24 157:3,11 163:7</p> <p>held (66) 2:5 33:11 44:18,24 63:19 113:25 130:19,19 133:2 170:24 173:4,15 174:14 213:20 220:19 222:18,24 223:4,11,12,14,19 223:22,25 224:3,13 224:24 227:5,13,22 228:3,4,10,19 229:2 229:10,12,19,20,22 231:17 232:4 233:22,24 234:3,6,7</p>	<p>234:11,16,20 236:14,22 237:9 238:13 252:23 260:9 263:2,4,7,11 307:13,20 308:8 324:3 333:21 337:16</p> <p>help (3) 6:5,14 247:14</p> <p>helped (1) 280:3</p> <p>hereto (1) 83:25</p> <p>hereunto (1) 341:23</p> <p>he'll (2) 134:20,20</p> <p>high (2) 17:16,17</p> <p>highly (15) 1:12,16 11:8 12:1,11 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1</p> <p>history (1) 32:5</p> <p>hit (1) 162:20</p> <p>hold (12) 111:3,3 184:12 231:24 232:2 244:5 250:9 254:17,18 322:9,10 323:16</p> <p>holder (1) 88:19</p> <p>holding (10) 73:9 225:13,14 228:6 228:7 231:18 233:12 307:3 337:14,19</p> <p>Holdings (2) 1:8 250:24</p> <p>holds (2) 232:6,7</p> <p>Honor (5) 77:21 99:18 100:3 101:21 104:7</p> <p>hour (2) 91:10 199:4</p> <p>hours (10) 62:8 69:4 77:21 214:8 215:17 246:7,23 256:10,16 257:7</p> <p>Hubbard (2)</p>
---	--	---	--	--

Contains Highly Confidential Portions

Page 16

<p>4:11 72:9 Hughes (2) 4:11 72:9 Hum (1) 261:12 hundred (2) 256:24 257:12 hundreds (2) 256:22 257:7 hypothetical (1) 323:25 hypotheticals (1) 322:18</p> <hr/> <p style="text-align: center;">I</p> <p>IBM (1) 161:11 idea (9) 62:15 68:15,20 143:25 179:21 187:15,16,17 221:11 identification (13) 7:2 47:8 50:21 121:11 178:8 219:8 235:4 240:10,14,16 267:19 291:11 297:8 identified (4) 292:24 293:14 306:19 337:11 identify (8) 210:4 241:3 281:11 293:3 300:2,11 302:7 337:2 identifying (3) 295:2,3 328:25 ii (1) 173:3 iii (1) 173:5 illiquidity (1) 96:4 immediately (4) 71:18 106:24 147:12 204:6 impact (14) 9:15 18:6 24:17,20 69:5 81:19 86:2,24 143:21 144:18 188:13 287:14 293:9 338:24 impacted (6) 12:23 26:16,17 294:3</p>	<p>294:6 295:4 impacts (1) 26:20 impaired (5) 310:6 315:20 316:24 324:4,21 impairs (1) 324:20 impede (1) 313:24 impeded (9) 310:17 312:14 314:7 317:18 321:15,17 324:17 325:13 328:9 impedes (1) 328:3 impending (1) 36:22 implementation (1) 13:4 important (1) 218:19 imposed (3) 314:21,24,25 improperly (2) 286:17,23 inability (2) 283:8,12 inaccurate (1) 88:11 include (23) 13:17 19:23 27:10 47:22 114:4 116:8 164:25 176:12 177:20 197:10,21 208:10,17 209:11 209:14,14 210:18 249:13 307:11,18 311:23 314:2 325:15 included (22) 13:14,25 144:13 209:25 210:5 211:20,21,21 221:22 222:16 234:4 258:11 259:13 279:17 310:15 317:8,14 319:2 326:6 329:14 331:12,20 includes (1) 176:14 including (14)</p>	<p>130:6 173:2 203:14 203:22 204:2,3,10 204:13,23 205:2,5,6 228:19 229:2 income (4) 201:21 202:8 245:18 274:7 inconsistent (2) 52:20 221:3 incorporate (1) 148:11 incorporating (1) 147:14 incorrect (2) 329:10 334:23 incorrectly (1) 334:2 increase (5) 28:5 84:17 85:2 142:10 143:13 increased (4) 86:5 141:21 143:4,7 incur (2) 31:18 75:13 incurred (5) 53:11,22 54:2,8 57:4 independent (14) 250:12,13,24 251:5 252:21 253:4 262:16 275:12 279:13 280:9 293:11,19 306:24 331:23 independently (1) 265:21 index (6) 23:3,7,8 152:4 342:2 343:2 indicate (2) 165:14 224:17 indicating (1) 107:17 indication (3) 168:18 293:8 315:8 individual (6) 136:24 137:10 139:13 164:3,4 165:14 individuals (5) 235:21 237:13 278:18 278:21 301:19 industry (7) 241:19 243:4,23 244:19 253:13 255:8 278:13</p>	<p>ineffective (2) 150:8,14 inferences (1) 36:3 inflated (2) 142:17,21 inform (3) 238:15 239:11 339:2 information (36) 8:3 10:21 12:9,21 14:13 16:15 18:5 21:6,17,19 23:17 25:10,11 53:19 63:21 64:9 88:16 94:6 95:20 98:13 156:13 162:18,21 164:7,10,18 165:25 214:20 216:6 253:19 257:17 276:15,24 279:17 296:19 335:9 informed (10) 76:8 238:21 287:17 289:3 329:11,16 331:19 332:3 338:14,19 infrastructure (1) 171:7 inherit (1) 130:12 initial (1) 334:25 inquire (2) 155:9 286:7 inquiries (1) 288:15 insecurities (1) 29:5 instance (1) 180:19 instances (1) 292:17 instituted (1) 21:24 institutional (1) 136:8 institutions (1) 137:11 instruct (2) 251:24 277:2 instruction (1) 252:3 instructions (1) 289:12</p>	<p>insufficient (2) 34:18 35:11 intend (1) 239:20 intended (8) 209:8 228:11 229:9 229:18 236:15 238:2,22 239:9 intent (1) 237:7 interact (1) 151:13 interest (3) 99:17,20 101:19 interested (2) 79:13 341:17 interests (1) 172:23 interfaced (1) 27:18 interim (2) 147:25 237:18 interpret (3) 243:7,8 247:11 interpretation (6) 223:12 243:2 246:3 246:11 291:5,14 interpretations (2) 243:9 319:21 interpreting (2) 243:13 255:25 interrupt (1) 303:21 interrupting (1) 90:16 intimately (2) 245:21 256:6 introduced (1) 220:4 inventory (2) 97:19 116:6 investigate (4) 335:11,17,24 336:8 investigated (2) 286:24 333:15 investigating (1) 335:9 investigation (22) 64:11 262:17 275:13 279:14 280:10 286:3,4,15 306:25 331:15 332:18 333:9,11 334:6,12 336:24 337:5,9,20</p>
--	--	---	--	--

Contains Highly Confidential Portions

Page 17

<p>338:15,17 339:4 investment (1) 310:9 involved (21) 13:21 16:10 19:16 20:7,10,11 25:2,3 64:22 68:12 75:2,4 75:6 178:16 180:14 183:16 195:5 256:6 257:23 258:2 273:24 involvement (4) 27:14 255:18,19,24 irrational (7) 81:23 114:22 116:14 119:23 123:14 182:7,21 issue (11) 296:5 298:12 299:21 300:19 302:2 308:3 319:22,24 330:4 335:12 336:19 issued (7) 255:16 272:14 286:5 286:11,18,23 287:18 issues (14) 7:6,10 8:13,23 9:4,5 20:20 147:2 248:15 251:8 293:6 303:15 319:24 337:11 item (2) 209:23 333:18 items (14) 217:15 294:14 330:15 331:16 333:25 334:2,5,7,10,12 336:23 338:15,17 338:21 it'll (1) 283:24 iv (1) 173:7</p> <hr/> <p>J</p> <p>J (2) 3:15 4:15 James (5) 71:23 219:7 235:12 235:13 342:14 January (2) 303:8,12 jeopardizing (1) 100:2</p>	<p>job (2) 1:25 255:12 Jointly (1) 1:8 Jones (3) 3:5 83:24 141:5 JPMorgan (8) 220:20 222:19 223:4 223:12,15,20 231:19 260:16 judge (3) 77:12 198:23 321:12 July (2) 214:16 250:22 June (4) 214:16 249:21,22 258:8 junior (1) 254:2 justifies (1) 328:6</p> <hr/> <p>K</p> <p>Karp (2) 276:8 277:8 Kathy (5) 1:24 2:7 5:9 6:9 341:5 KAY (4) 4:9 30:11 40:18 185:9 keep (4) 27:19,21,23 179:8 kept (1) 10:17 kind (6) 6:4 30:23 85:25 209:25 225:12 278:11 kinds (1) 322:24 KING (1) 3:18 Klepfer (4) 1:24 2:8 5:10 341:5 knew (12) 36:21 169:6 190:21 211:25 212:11,16 212:22 213:19,23 214:21 215:4,9 know (305) 6:13,17,21 13:14 15:7 17:14,19 18:18,21 19:8 21:10,22 23:14 24:16 25:11,13,20 26:15,15,18 28:10</p>	<p>29:19,22 30:2,12 31:22,23,24 32:4,5 32:8 33:3,7 34:23 36:22 39:8,9,22 40:20 41:23 53:6 54:9,15 55:23 56:24 57:9 58:15 59:8 60:9 61:8 62:3 63:5 63:7,14,15,21 64:6 66:2,16,16,19,20,21 67:14,17,22,24 68:7 68:13 70:6,11 71:10 71:11 72:2,5,12 73:13,20,21 74:19 76:17 77:4 79:4,8 81:10,18 82:3,4 85:9,11,22,24 86:16 86:24 88:14 90:12 91:10 92:12,17 93:9 93:10,11,17,17,18 93:20,21 94:4,5,9 94:12,15 95:9,14,14 95:16 96:20 97:2,6 97:7,11,21 98:14 99:11 102:18,19 106:8,9 107:9,11 108:9,10 110:4,5 112:5,22 118:9 119:21 120:9,18 123:22 132:8,9 136:20,24 137:2 138:3 139:17 143:18 144:6 145:3 146:21 147:7 148:22 149:19 150:2 153:16,18 155:11 158:5 159:21 160:16 161:13 162:11,16 163:8 165:21,23 166:13 168:5 170:10 171:2,3 173:25 178:12,19 180:3,11,12,13,19 180:22 181:11,15 181:22 183:3,6,14 183:15 185:10,12 187:25 189:11 192:6 193:10,11 194:17,23 195:14 195:18,25 196:9 199:4 200:8 201:11 202:10 204:19 206:3,8,22 208:5,21</p>	<p>209:10 210:17,22 212:19 213:4 214:3 214:5,15,20,23 215:20 216:11,19 219:14,15,16,18,24 220:6 225:6 226:10 226:12 230:3,23 231:2 235:13 246:14 248:9,11 251:10,12,20 256:25 259:21 260:8 261:17,24 262:20 264:11 266:6,10 267:11 268:19 269:12 270:23 273:6 275:20 276:9 278:7 278:16 281:19 282:15,21 283:2,9 284:9,23 285:12,14 286:10,14 288:11 288:14,18,19,22 293:22 294:4,24 296:16,21,24 297:12 298:2,7 304:10 306:5 307:17 308:19 311:2,4,6,10 312:18 313:14,23 316:17 318:10 323:25 333:5 335:20 337:13 339:2 knowing (6) 63:9 95:15 118:17 212:10 215:16 320:22 knowledge (14) 8:18 12:14,14 28:4 30:19 36:6,9 63:6 67:25 68:6 76:4 88:10 96:25 161:25 knowledgeable (1) 24:14 known (7) 85:18 101:18 102:5 102:17 265:17 283:16 296:11 Kobak (9) 72:10,14 219:8,11,15 222:8,13 236:4 342:14 Kobak's (1) 220:11 KPM (1)</p>	<p>255:12 KPMG (4) 250:3,4,10 252:21</p> <hr/> <p>L</p> <p>L (1) 3:16 labeled (11) 5:3 91:15,19 145:9 146:6 199:8,12 240:6,19 299:8,12 lack (6) 101:16 149:10 182:7 182:22 217:12,14 lacking (1) 182:11 laid (1) 194:18 language (13) 174:12,16,20,23 178:3 225:4,21 228:2 230:13 232:25 246:11 284:20 289:20 large (1) 97:19 larger (3) 18:22 38:10,17 largest (1) 17:10 late (1) 104:5 law (5) 235:25 249:10,13,14 249:16 lawyer (6) 72:3 173:20 204:16 243:10,14,19 lawyers (3) 177:17 243:21 309:23 LBHI (1) 235:25 LBI (155) 17:6 29:22 35:23 42:11 45:10,16,24 47:14 48:5,13,13,14 48:17,25 49:13 52:21 54:3,7,10,13 55:19 57:4 58:4 59:22 71:19 80:19 85:5,9,11,18 87:8 106:24 107:24 109:21 110:20 111:12 113:24</p>
---	---	--	--	---

Contains Highly Confidential Portions

Page 18

116:24 117:18 118:17 119:24 121:14,19,20 122:13,22,23 124:3 124:4,14 125:3,11 125:15,24 126:9,13 127:23 130:18 133:3 140:13 142:7 142:22 143:18 144:17,20,20,23 147:14 153:7 162:18 170:5,24 180:20 202:3,4,22 205:10,20 206:6,7 206:10,15,21 210:23 212:3 213:20,21 220:16 220:18 222:17,24 223:11,14,22,25 224:3,15,18 227:22 228:3,10,14,19 229:3,11,12,19,21 229:23 230:9 231:18,18 232:6 233:25,25 234:5,15 236:12 238:14 259:22 260:9 266:6 267:4,21 272:19 282:13,22 285:9 288:2,7,23 289:17 301:20,23 306:15 306:22 307:11,12 307:18,20 308:7,8 309:24 310:3,8 311:24 313:2 314:15 318:7 320:12,13,18,24 323:23 329:22 LBIE (16) 306:22 307:2,5,12,13 307:20 308:8 314:15 320:12 334:22 335:13,14 335:18,21,22 336:11 LBIE's (2) 332:10 336:13 LBI's (37) 61:15 76:8,24 84:4,6 84:8 89:6 106:12 117:23 121:17,17 121:22 122:16,25 124:6,16 125:6,17 140:12 151:4	153:17 180:9 201:2 202:24 205:9,19 223:17 225:11 238:20 260:19 261:18 265:10 292:15 309:11 328:25 329:2 336:14 learned (2) 30:6 329:9 leave (3) 120:19 249:24 269:24 led (2) 148:18 307:22 left (1) 249:21 legal (25) 5:8 72:14 173:18 174:8 176:20 177:8 177:15,16 204:15 204:20 205:14,24 206:4 212:6 233:6,7 242:25 243:14 262:10,11,14,18 276:3,4 277:12 Lehman (91) 1:7 3:6 5:5 17:11 39:6 41:2 43:8 56:4 61:3 61:21 62:4,12,15 63:10,11 67:13,19 78:2 88:3,9,9,18 90:6,17,20 92:6 93:3,14,19 94:6 95:16,16,19 98:19 98:21,24,25 99:19 99:22 100:13,16 101:5 107:21 109:18 110:17 111:9 119:24 138:13 148:16 160:9 161:17 163:2 163:25 172:20 174:13 176:10 177:6 178:14,17,25 181:19 182:14,23 183:18 189:14 191:12 192:23 202:21 214:12 218:16,20 244:3,23 246:5 248:24 250:23 266:5 272:3 272:13 281:25 282:4 286:16 287:10,17 308:4	315:25 323:6,7,11 337:14 344:2 Lehman's (18) 38:21 44:8 77:25 78:14 80:6 87:16,17 87:18 101:17 105:13 166:2 167:21 172:23 173:13,14 218:25 271:9 323:7 Leitner (4) 8:17 92:11 159:13 212:8 Leitner's (1) 87:3 letter (16) 40:8 63:4 127:10,25 198:25 224:8,21 248:8 284:14,16,21 284:24 289:24 297:21 298:5 308:17 letterhead (1) 296:25 letters (2) 285:2,12 letting (1) 288:13 let's (13) 108:7 109:25 184:7 184:25 190:20 193:4 240:3 274:3 299:6 308:21 309:7 328:18 338:5 level (14) 28:14 29:9,10,12,14 29:16,22 30:5 34:10 34:13 57:14 164:16 164:22,23 levels (3) 29:9 33:15 164:2 Lexington (1) 2:6 liabilities (9) 10:5 37:18 42:2 121:17 122:15 221:15,21 223:6,10 liability (5) 38:21 117:14 332:20 332:25 333:6 liaison (1) 9:16 Liberty (1) 3:22	license (2) 254:18,23 licensed (1) 243:6 licenses (1) 254:19 lien (9) 284:16,21,24 285:2 285:12 289:20,24 306:22 307:4 liens (2) 10:2 284:17 lieu (2) 33:14 38:21 life (1) 255:20 light (3) 143:10,17 189:13 limit (4) 80:18 204:4 229:9,18 limitation (4) 204:3,23 205:2,5 limited (4) 121:6 204:12 225:4 318:15 limiting (1) 205:6 line (22) 48:10 51:23 52:8 178:22 201:23 220:11 228:17 343:4,5,6,7 344:8,9 344:11,12,14,15,17 344:18,20,21,23 lines (2) 84:19 255:2 liquid (1) 185:2 liquidate (45) 28:2 29:17 61:23 71:19 74:10 75:12 82:6,10 106:12,16 106:24 107:6,13 120:19 132:7,15,21 134:5,12 135:24 180:8 183:23 184:3 184:4,5,8,18 185:6 185:11,12,14 187:12,19 188:3,10 188:11,25 189:2,7 191:15 192:24 193:4,14,15 194:8 liquidated (26) 37:7 56:20 61:19 82:8	83:2 85:5 107:5 131:7,7,20 179:25 180:6 185:22,25 186:13,25 187:9 188:17,18 189:16 190:4 191:8,13 192:17 193:13 274:12 liquidates (1) 33:25 liquidating (21) 33:19,23 34:18,22 35:12 44:21 76:2,5 85:12 118:19 185:15 186:10,10 186:21 187:2 188:5 188:12,15 189:12 189:21 192:15 liquidation (64) 31:7,17,25 33:12 34:5 36:19 48:11 54:25 56:13,15 58:8,17 61:22 73:16 74:15 74:15,23,25 75:2,5 75:9,21 82:14 107:22 109:18 110:18 111:10 131:22 132:21,22 134:11 168:23 180:15,17 184:10 185:4,16,18,24 186:5,7,15,17 188:8 189:8,15 190:6,23 257:24 259:2 264:9 266:12,20 267:5,23 268:13,24 269:10 269:20 270:4,9 272:19 273:25 282:22 liquidity (6) 41:2 95:18,24 99:25 100:19,21 list (5) 156:17,20 281:12 283:23 334:6 listed (5) 201:17 279:9 305:25 306:20 338:16 literature (2) 273:10,11 little (24) 6:5 13:22,23 14:21,22 17:2 18:23,24 29:11 40:12 99:11 121:19
--	---	--	--	---

Contains Highly Confidential Portions

Page 19

<p>122:23 124:3 125:8 126:8 140:13 142:7 202:5 227:15 247:5 257:14 276:12 283:25 lived (1) 63:7 Livenote (1) 2:11 LLP (6) 2:6 3:5,11,20 4:4,11 loan (4) 290:22,24 292:3 295:23 Loans (1) 291:17 location (6) 283:14 284:4,13 307:8,24 308:12 lock (4) 129:7 130:5 133:24 134:3 locked (7) 10:16 132:14,15 133:5 261:8 295:17 306:6 locked-in (1) 90:12 lookup (4) 129:11 307:13 317:16 325:12 logic (1) 310:7 logical (1) 209:6 long (56) 16:4 18:18 19:6 25:23 28:9 32:14,25 38:23 38:25 39:14,17 40:3 40:15 41:9 64:6 66:17 67:14 68:16 68:20 82:5 88:24 89:5 94:5 97:8,11 97:14 115:7 116:3 117:15 123:25 126:19 144:4,19 151:4,12,22 152:4 157:22 160:4,18 161:11 162:11,16 166:8,13 178:24 181:15 182:13 187:11 191:25 192:6,7,8 250:4 271:22 291:18</p>	<p>longer (6) 80:23 267:9 272:4 283:13 288:17 316:4 longest (1) 26:3 look (41) 30:21 31:21 49:7 52:9 62:16 71:14 83:22 84:19 106:19 115:4 115:25 116:4,5 141:4 147:8 161:9 165:25 172:17 191:7,22 192:21 197:3 203:21 213:10 224:20 228:16 241:23 245:11 260:21 262:2,21 281:7,14 283:24 293:12,19 299:5 330:15 333:13,17,18 looked (21) 8:8 61:10 87:3 94:22 102:22,24 108:5 109:24 110:23 166:4 174:13 203:19 204:10 207:14 217:6 246:16 280:3,7,11 293:22 294:2 looking (24) 17:15 30:20 45:21 47:12 62:14 85:13 87:7,9 98:16 100:22 165:18 166:20 167:18 200:21 226:13 227:12,14 227:15 261:25 282:18 303:25 322:23,25 329:3 looks (9) 52:25 96:14 101:7 107:11,19 222:13 223:4,5,21 loose (1) 110:24 lose (10) 87:5 108:6 109:25 132:21 135:16 161:15 184:9 185:3 189:16 190:22 losing (2) 179:22 180:23</p>	<p>loss (12) 37:23 38:13 78:2 88:24 89:12,17 119:11 131:9 149:22,23 181:25 189:19 losses (12) 57:4 75:13 82:9 90:5 90:7,13 118:6 149:2 161:21,22 185:24 186:6 lost (9) 27:6,6,8 103:9 149:14 150:8 179:9 180:18 180:20 lot (17) 18:20 26:24 27:6,7,8 62:14 86:14 93:15 93:21 113:3 134:17 169:24 181:12 194:9 200:2 246:24 291:6 LOUIS (1) 3:17 lunch (2) 139:18 145:6 Luncheon (1) 145:11 L-B-I-E (1) 307:6</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M (1) 4:9 Madison (1) 4:6 main (2) 19:9 191:7 maintain (3) 9:25 27:21 98:9 maintained (1) 20:3 maintaining (5) 20:12 43:25 45:25 47:15 48:6 major (1) 94:16 maker (1) 28:22 makers (1) 19:11 makeup (1) 164:17 making (7)</p>	<p>20:13 34:22 126:3 131:9 136:19 169:8 263:21 man (1) 23:14 manage (4) 147:24 148:9,16 214:19 managed (2) 254:8,15 management (10) 24:5,10,12 96:23 147:23 148:19 163:25 255:7,11 310:9 managers (1) 161:9 managing (2) 155:22 157:14 mandate (1) 104:18 manner (2) 189:9 218:7 margin (195) 9:13 26:11,16,18,20 27:2 28:5 29:13 30:15,21 31:3,8 32:2,9 33:9,10,14 34:17 35:10,24 36:17,25 37:5,17,22 42:16 75:14,19,24 82:9,13 83:15,21,21 84:12,21 85:13 86:4 86:16 87:4 107:23 108:2 109:20,23 110:19,22 111:11 111:14 114:5,16,21 115:10,12,16,19 116:9,16 117:3 119:3,10,25 121:16 121:21 122:14,24 123:15 124:5,8,13 124:15,22 125:4,16 125:24 126:9,14,17 126:22 127:3 128:23 130:15 131:21 132:9 133:20 135:14,15 135:20,24 138:5 140:11,16 141:9,21 142:6,8,9,16,20,24 142:24 143:3,10,12 143:22,24 144:3,19 166:24 167:11,19</p>	<p>167:23 168:19,21 170:16 173:4,14 174:14 175:11 176:12,15 177:20 179:3 181:4 182:4 182:16,19 183:20 185:19,23 186:2,3 186:11,12,18 187:2 190:2,7,9,22,24 191:21 194:7 196:12,18 197:10 197:22 198:13 199:18 200:3,10 205:9,18 206:5 207:5,8,17 208:10 208:14,22 209:3,15 210:9,14 211:4,16 212:2,7,10,14,17,22 213:12,20 223:8 224:18 225:9 231:13 232:3 237:2 247:23 309:3,18,23 311:13 312:7,22 315:9,10,25 320:11 321:10,12,14 322:12 323:17 margins (1) 135:23 mark (5) 47:4 50:18 178:5 267:16 297:3 marked (30) 7:2 42:24 47:5,5,8,11 50:21 77:7 83:5 89:21 121:2,10 127:5 132:11,18 146:13 172:14 178:8 219:5,8 224:5 234:25 235:3 240:10,13,16 267:18 291:11 297:8 303:23 market (56) 19:10 23:8,10,24 28:22 30:21,22 32:7 32:11 34:15 35:3,8 35:15,17,20 36:16 57:20 86:3 89:20 90:4,15 92:21,22 102:14 120:13,15 132:5,6,11,18,19,20 134:11,12,15,19 135:12,13 136:2,13 136:18 138:2,8,9,16</p>
--	--	--	--	---

Contains Highly Confidential Portions

Page 20

<p>138:19,22,23 150:18 163:14 187:21 188:2,6,14 218:9 279:11 marketing (4) 101:11,16 102:8,10 marketplace (6) 31:14 36:13 81:18 92:16,19,25 markets (6) 13:24 103:7 136:21 255:8,10 269:20 market's (1) 138:18 market-making (3) 13:25 14:12,13 marking (1) 90:3 Marlo (2) 276:8 277:8 marriage (1) 341:16 Martini (4) 297:4,8,16 342:24 material (1) 8:9 materials (5) 219:18 261:18 262:18 302:8,19 matrix (2) 164:18 302:3 matter (27) 5:5,24 92:7 93:4 104:22 137:6,17,20 139:4,8 143:5 169:7 184:9 185:3 196:13 220:4 232:11,12 250:14 251:5 256:11 295:15 307:18 308:7 313:25 337:5 341:17 matters (4) 9:18 204:6 313:23 339:4 maximizing (1) 79:14 McDade (14) 178:8,11,23 179:7,15 180:24 181:6,12,16 181:24 182:3,7,22 342:13 McDaniel (5) 71:23 73:5 235:12,13</p>	<p>238:9 McISAAC (375) 1:13 2:5 5:1,4,14,20 6:1 7:1,2 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1,25 47:1,11 48:1 49:1 50:1 51:1 51:17 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 65:4 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1,22 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1,6 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1,4 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1,22 140:1 141:1 142:1 143:1 144:1 145:1 146:1,3 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1</p>	<p>177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1,23 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1,15 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 240:10,13,16,23 241:1 242:1 243:1 244:1 245:1 246:1 246:22 247:1 248:1 249:1 250:1 251:1 251:18 252:1,7 253:1 254:1 255:1 256:1 257:1 258:1 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 276:13 277:1,24 278:1 279:1 280:1 281:1 282:1 283:1 283:23 284:1 285:1 286:1 287:1 288:1 289:1 290:1 291:1 292:1 293:1 294:1 295:1 296:1 297:1 298:1 299:1,17,18 300:1 301:1 302:1 303:1 304:1 305:1 306:1 307:1 308:1 309:1 310:1 311:1 312:1 313:1 314:1 315:1 316:1 317:1 318:1 319:1 320:1 321:1 322:1 323:1 324:1 325:1 326:1</p>	<p>327:1,18 328:1 329:1 330:1 331:1 332:1 333:1 334:1 335:1 336:1 337:1 338:1,13 339:1 340:1,18 341:9 342:3,8,17,19,20 344:4 McIsaac's (1) 302:15 mean (42) 40:20 44:6,23 58:12 61:24 63:20 65:20 73:8,23 92:16 95:21 95:22 96:2,6 112:12 114:8 123:6 126:5 128:12 133:21 160:17 164:20 174:16 176:18,25 177:4 183:2 197:12 204:25 206:3 222:11 227:10 228:7 229:24 232:18,20 233:7 241:7 242:9 244:10 259:24 269:15 meaning (2) 128:7 200:16 means (27) 33:20 45:6 171:13 176:22 177:10,12 179:21 183:14 203:10 204:2,17,23 205:2,3,4,6,7 206:4 211:13 225:7,13,14 225:15 231:18 239:2 242:8 321:11 meant (11) 95:23 107:10 154:19 164:14 181:12,22 181:23 227:6 230:2 230:3 231:21 measured (1) 33:14 meet (6) 134:20 135:14,22,23 136:11 139:14 member (7) 36:7 43:9 61:4 89:13 232:5 255:5,6 members (6) 29:4 34:23 37:8 75:16 76:18 232:2 memo (1)</p>	<p>301:15 memorandum (5) 121:3 301:10 303:13 303:14 342:11 memory (1) 260:10 memos (2) 291:6 307:8 mention (1) 330:4 mentioned (6) 9:20 10:25 26:9 41:24 181:13 254:17 Mercantile (2) 77:23 78:14 merchant (1) 202:25 mere (3) 283:18 289:8 324:19 merged (2) 68:15 258:8 merger (4) 20:11 68:17 258:4,9 mergers (2) 20:9 68:13 Merit (2) 2:9 341:6 Merrill (1) 67:20 Michael (1) 5:7 middle (4) 103:4 203:7 250:22 267:2 million (38) 38:4,9 48:15 52:12 53:12 84:17 85:2 86:6 113:2 117:16 140:18 141:10,14 141:17,25 149:14 149:17 150:7,8 208:7,7 209:18 260:23 274:23 275:4,4,5,7,8 278:25 296:13 306:18 308:14 315:12 316:24 318:15 328:25 331:3 mind (16) 57:10 92:20 93:2 124:18 167:5 168:6 168:16 179:8 184:21 196:2</p>
---	---	---	---	---

Contains Highly Confidential Portions

Page 21

197:24 215:21 218:25 219:2 229:25 244:16 minds (1) 220:6 minimal (3) 57:15 132:5,9 minimum (26) 33:12,19,23,24 34:2,2 34:4 121:16,20 122:14,24 124:4,8 124:13,14,22 125:4 125:16,24 126:9,14 126:17 140:10 142:8,24 164:3 minute (1) 261:23 minutes (3) 139:20 199:5 239:24 Mischaracterizes (2) 162:24 163:21 misreading (1) 265:25 missed (1) 46:15 misstates (18) 17:25 33:22 42:9 82:16,25 115:22 123:19 130:22 140:21 175:15 195:22,22 205:14 205:24 215:6 265:24 268:2 312:4 mistake (1) 287:18 mistaken (1) 241:22 misunderstand (1) 325:22 misunderstood (1) 164:5 mitigated (1) 150:20 mode (1) 288:20 model (1) 162:10 models (6) 16:16,17 17:22 18:3,4 30:23 modifying (1) 197:13 moment (6) 12:9 85:4 100:12	235:5 264:20 270:25 Monday (11) 39:21 86:9 87:24 91:5 102:16 103:8 104:12 168:22 170:21 271:22 327:7 Mondays (1) 10:20 monetary (1) 279:11 money (31) 27:6,7,8 76:23 95:20 129:10 130:6 132:13,14,21,22 133:25 135:16,17 135:18 136:19 159:25 160:6,20 171:18 177:5 184:10 185:4 279:11 288:3 289:10 310:4 313:6 320:25 321:7 328:11 moneys (11) 55:18 130:5 133:24 176:2 264:9 314:20 330:10,18,22 331:5 331:8 monitor (7) 149:7,8 161:8 282:7 283:8,13,19 monitoring (1) 212:9 month (7) 58:5 66:21 68:21 268:8 269:5 271:10 271:14 monthly (1) 243:6 months (7) 16:8 19:2,6 25:5,8 77:16 93:10 morning (19) 5:20,21 36:2 74:11 87:24 91:5 134:21 170:22 256:16 266:16,18 270:10 270:13 272:5,23 290:14 309:22 323:3 325:2 morning's (1) 247:24	motion (12) 65:19 100:11,11 121:4,8 241:6,8,9 246:16 247:19 335:10 342:12 move (12) 36:16 61:23 134:20 171:6 176:2,10 188:2 264:9 279:23 292:4 323:14 328:18 moved (3) 171:25 190:21 281:16 movement (5) 30:20,21 90:15 135:13 163:14 movements (1) 143:10 moves (1) 23:25 moving (5) 147:21 172:2,3 187:21 288:21 multiple (3) 16:22 140:19 163:15 <hr/> N <hr/> N (2) 3:3 4:2 naked (9) 152:17 153:2 156:3 159:3,4,6 163:12 165:10 168:2 name (11) 5:7,22 21:20 176:11 178:12 240:23 298:3 323:7,11 344:2,4 names (1) 305:4 nature (4) 40:10 95:12 251:21 260:24 necessarily (12) 87:11 88:14 89:15 96:2 105:13 133:14 167:9 209:11 216:16 218:18 219:19 245:16 necessary (4) 49:8 51:18 113:8 332:23 necessitated (2) 49:17 50:4	need (21) 6:16 21:10 25:12 31:12 44:22 49:18 50:5 51:20 71:18 99:11 103:7 104:5 104:11 106:23 164:19 169:24 273:5 281:6,10 290:10 305:20 needed (10) 26:15 95:20 102:15 170:3 197:5,21 204:18 216:2 221:21 319:12 needing (1) 325:12 needs (3) 103:20 160:15 319:9 negative (4) 51:14 115:15 117:18 206:2 negatives (1) 115:20 negotiate (21) 16:4 20:20 25:6 62:4 63:11,13 70:3,4 116:19,25 118:22 118:24 120:9,10 142:19 190:5 191:16 196:12 197:3,23 198:7 negotiated (27) 63:2 66:7,11 69:4,12 69:17,22 73:18 93:8 113:14 119:20 120:21 122:19 123:9,11 137:16,23 139:6 194:17 198:20 214:21 218:14 237:17 238:7 324:14 326:18 327:5 negotiating (16) 20:15 63:25 64:4 67:15 105:8 108:25 116:20 117:23 168:6 190:2,3 197:6 210:10 237:19 312:20 324:15 negotiation (6) 20:18 64:22 68:14 112:5 196:14 198:4 negotiations (16) 65:23 67:21 68:2	69:14 73:20 76:21 87:11 92:13 93:10 112:7 178:16 183:17 214:8 218:6 324:20,24 Neil (7) 4:15 64:20 140:5 160:15 246:9 302:5 305:6 neither (1) 341:18 net (22) 15:15 38:8 48:11,14 48:17 81:21,25 94:23,24 108:16 112:18 115:9,11,15 116:2 117:6,9 123:24 129:10 133:7 134:23 253:21 Neuhardt (34) 3:16 240:22,24 246:24 247:9 252:2 252:5,10,16 257:15 257:22 261:6 277:16,21 280:2 284:2 287:7 298:23 299:4,14 301:5 302:5,14,21 304:2,5 305:5 306:8 322:17 327:19 338:5,12 340:6 342:5 Neuhardt's (1) 276:21 never (12) 29:20,21 31:22 33:8 34:21 82:13 274:2 295:17 330:12,18 330:22 331:5 nevertheless (1) 31:17 new (25) 1:3,14,14 2:7,7,12 3:8 3:8,14,23,23 4:8,8 4:14,14 21:3,3,3,24 195:8 255:5,23 341:3,4,7 nods (3) 6:13,15 273:3 nonresponsive (2) 306:9 323:13 non-customer (4) 292:8,20 295:19 298:22
--	--	---	---	---

Contains Highly Confidential Portions

Page 22

<p>non-customers (1) 206:18</p> <p>non-highly (1) 22:2</p> <p>non-PIM (1) 47:21</p> <p>non-redacted (1) 304:25</p> <p>normal (7) 152:9 217:22 218:8 263:24 264:3 288:20 330:13</p> <p>normally (5) 23:16 162:6 218:24 271:11 278:3</p> <p>North (1) 3:13</p> <p>nos (3) 43:10 235:3 342:15</p> <p>Notary (3) 2:11 5:15 341:6</p> <p>note (2) 12:7 296:25</p> <p>noted (2) 208:23 212:6</p> <p>notice (10) 285:17,24 286:5,10 286:14,17,19,21 287:18,22</p> <p>notifying (1) 288:12</p> <p>notwithstanding (1) 101:15</p> <p>November (1) 258:13</p> <p>NTS (1) 245:17</p> <p>number (32) 5:3 39:23 46:22 77:3 77:22 79:14 86:8 91:15,19 95:2 108:6 109:25 110:24 139:10 145:9 146:6 199:8,12 200:16 240:6,19 260:22 261:2 274:23,24 275:7,8 299:8,12 334:5,6 338:3</p> <p>numbers (8) 17:15 53:18 275:9,13 275:15,23 305:12 305:18</p> <hr/> <p>O</p>	<p>object (128) 10:11 14:24 16:7 17:13,24 21:8 23:11 23:21 24:7 25:7,18 28:8,18 29:7,18 30:8,17 31:9 34:20 35:4 37:2 39:7 40:5 40:17,24 41:15 42:8 45:5 49:22 53:15 54:20 55:13,22 56:16 57:7,17 58:6 58:11 59:23 61:5 62:9 64:2,13 65:6 65:11 67:11 68:10 69:10,25 73:3 74:17 75:10 77:2 78:16,20 78:24 79:9 80:8,15 82:24 85:15 88:13 88:25 89:25 90:24 96:9 97:16 98:7,23 104:24 105:11 109:13 112:13 113:10 115:2,21 116:17 117:11 118:8,20 119:16 120:4,16 123:18 124:17 126:15 129:23 130:9,13,21 132:2,2 135:5 136:3 136:15 138:15 139:9 142:12 143:15 144:8,22 148:12,21 149:5 150:9 151:10,16 152:20 153:14,21 154:4 155:6 156:6 157:4 158:2,17 159:9 160:11 162:5 162:23 163:20 166:10 167:2 173:17 193:7 251:23 322:15 329:5</p> <p>objection (147) 14:20 25:25 30:10,11 31:20 32:10 33:21 35:13 48:20 50:8,9 57:8 65:5 69:8 79:17 80:3 81:5,16 81:24 82:16 86:11 89:14,23 94:3,21 95:8 96:24 105:23 108:3 111:15 112:6 117:4 119:6 140:20</p>	<p>157:8 161:4 163:10 167:13 168:3 170:17 172:9 174:7 174:18,22 175:14 175:22 176:9,19 177:7,14 179:17 181:9 182:9,10,24 183:25 185:8,9,21 186:8 187:4,14,22 188:22 189:10,22 191:3 192:4,5 194:15 195:2,21 196:10,21,23 197:14 198:14 199:22 201:4 202:15 204:14 205:13,23 208:2,20 209:9 211:5 213:2 214:9 215:5 217:23 218:10,21 222:10 223:2 224:2,16 225:5 226:7 227:2 227:19 228:12 229:13 231:9 232:17 233:5,19 234:19 237:6,11 238:17 239:12 243:17 244:5,15 246:9,13 247:15 257:10 259:10 263:9,15 265:23 266:13 267:25 270:7,21 272:11 273:18 278:5 287:5 287:20 289:2,11 294:22 308:10 309:16 310:11 312:3 313:13 317:10,12 318:18 318:20 321:4 325:10 337:17</p> <p>objections (1) 40:18</p> <p>objective (2) 79:8 149:19</p> <p>objectives (2) 78:22 79:25</p> <p>obligation (7) 44:3 129:9 228:8 272:8 335:17,25 336:9</p> <p>obligations (31) 27:18 76:19 88:21 114:17 127:2</p>	<p>128:22 131:11 133:6,10 136:11 139:14 172:24 173:5,7 175:7 199:25 208:5 224:24 225:11 227:23 228:15,20 229:3 231:25 232:4 233:23 234:7,12,17 234:22 236:16</p> <p>obliged (1) 171:23</p> <p>obtain (1) 156:12</p> <p>obtaining (1) 158:3</p> <p>OCC (192) 9:14,17 26:11,19 27:11,14 28:20,24 30:14 32:8,22 33:4 34:7 35:23 36:6,14 37:17,18,23 38:4,6 42:12 43:9 44:9 52:10 60:12,18,23 61:2,7,12,16,19,23 71:18 73:16,19 74:9 74:14,15 75:2,3,19 75:20,24,25 80:6 82:10 84:4,7,9,13 85:6 89:8 106:11,15 106:23 107:7,22 109:19 110:18 111:10 113:25 114:18,21 117:20 118:13 120:22 121:16,17,21 122:14,16,25 123:24 124:5,8,15 125:3,7 140:11,17 142:17 144:7 147:12,14 168:19 170:7,21,23,24 171:8 173:4,15,24 174:15,24,25 175:24 176:11 177:3,11 178:25 179:4 181:5,7,17 182:4,15,20 183:22 184:5,18 185:6 186:5,17,23 188:21 189:2,6 191:13 192:8,13,16,20,23 192:23 193:11 205:10,19 206:6,9</p>	<p>206:21 207:6 212:2 223:8,22 224:14,19 232:6 234:5,6,8,11 234:12,15,16,17,20 235:17,18 236:11 236:14,21,23,23 237:3,9,10,13,20,24 238:14,15,21,23 239:3,9,11,16,19 247:20,23 308:22 309:3,15,18 314:16 314:19,22 315:15 315:16 316:9 319:11,16 320:11 320:14,17 321:2 322:22 323:6,11</p> <p>occasion (1) 77:14</p> <p>occur (4) 79:2 88:6 91:5 198:4</p> <p>occurred (6) 76:21 87:15 90:7 122:20 286:25 287:3</p> <p>occurs (1) 303:22</p> <p>OCC's (12) 29:4 30:13 31:5 36:20 36:24 75:9 142:20 220:20 222:18 223:19 232:8 237:7</p> <p>October (7) 257:9 333:11,24 334:24 335:11 336:20 337:5</p> <p>offer (4) 99:24 218:17,18 246:10</p> <p>offering (2) 76:18 242:3</p> <p>offices (1) 2:5</p> <p>offset (1) 38:15</p> <p>offsetting (1) 115:20</p> <p>oh (10) 45:17 70:25 71:4 103:14 127:17 139:25 172:15 200:20 254:22 265:4</p> <p>okay (244) 6:4,11,19,23 7:8,13</p>
--	---	--	--	---

Contains Highly Confidential Portions

Page 23

7:19,21,24 8:11,20 9:19 10:9,25 13:9 14:15 15:7 16:13 17:11,18 18:24 19:4 19:15,19 20:5 25:23 27:3,13 30:24 33:6 34:6,9 35:17,22 38:23 40:3 41:18 42:23 43:15 44:13 46:16 47:18,22 49:7 50:3,15,18 52:5 63:8 64:15 65:9,22 66:24 69:3 71:13 72:15 75:18 77:9 83:18 86:4 87:13 89:9 92:3 99:14 101:14 102:21 103:2,17 111:23 113:22 118:15 122:4,9,11 125:15 126:7 127:15,17,19 127:21 128:19 131:18 133:12 138:25 139:20,21 139:22,23 141:24 145:7 147:11 148:17 152:12 154:10 155:15 157:8,19 168:17 175:2 176:17 177:18 178:22 183:16 184:20 186:24 189:5 191:25 193:2 194:4 197:9 199:2 201:16 203:3,21 204:22 205:8 211:24 217:5 219:19 221:9 223:18 226:21 228:16 230:11 234:14,24 235:18 236:4 240:3 241:13 242:14,18 243:10 243:22 245:4,12,15 245:17,20,22,25 246:10 247:21 248:7,16 249:3,16 249:24 250:6,9 251:3,14,20 252:20 253:10,24 254:17 255:23 256:3,8,13 257:6,22 258:6,14 258:23 259:7,21 260:12 261:10	263:13,19,25 264:12,18 265:7,8 266:6,10 267:3 268:9 269:3 270:14 270:25 271:15,24 272:18 274:3,19,22 275:6 277:4,18 278:17 280:14 282:15 284:6,12 285:16 286:7 287:3 289:15 290:8,16,23 291:15,19 292:4 293:11 295:9 296:3 296:21 297:15,16 298:4,7 299:2 300:18 301:6 302:4 303:20 304:4,12 306:9 307:10,17 308:6 309:7,18 319:13,20 321:24 322:19 330:21 331:24 332:8,15,21 333:5 337:20 338:5 339:6,15 340:5 OLIVER (1) 4:4 omitted (1) 334:2 omnibus (3) 332:25 333:7 335:14 once (2) 100:24 315:11 ones (3) 19:13,13 296:19 ongoing (3) 109:3 150:18 294:17 online (2) 111:22 286:13 oOo (1) 340:11 Op (2) 243:7 253:16 open (16) 84:3,6,8 103:8 121:22 122:25 124:6 125:6 125:12,23,25 128:6 134:12 140:12 156:14 170:14 opened (3) 132:6,20 302:22 opening (3) 325:19 326:20 327:7 Open-ended (1) 210:14	operate (2) 99:25 200:9 operating (3) 271:5 272:4,20 Operational (1) 253:17 operations (3) 244:2,22 273:2 opinion (85) 68:24 69:5,9 88:12 95:4 115:14 119:22 132:24 137:3,13,21 137:21 139:4,8 193:6,19,23 195:16 196:4,6,8,16,22 197:2,18,18 204:20 205:8,18 207:2,4 212:13,21 213:9,10 213:11,18,25 214:2 224:12 227:21 228:4 232:14 233:3 233:15 246:11 248:2 269:2,8,23 270:3,11,20,23 273:8,15 274:19 276:16 284:7 287:4 287:19,24 291:20 297:18 308:9,15 309:15,17 311:16 312:6,10,13 313:12 314:6 318:17 319:8 322:12 323:18 324:6 326:12 327:10 328:23 331:11 332:22 337:25 opinions (10) 7:8 63:23 92:7 93:4 224:10 242:3 252:13 256:18 258:24 276:24 opportunity (1) 14:24 opposed (10) 6:13,15 14:6 49:19 50:6 133:22 193:25 210:5 268:6 334:11 Opposition (1) 121:7 optimally (1) 103:5 option (8) 90:10 117:15 131:13 152:3,4,23 153:2	176:11 options (41) 9:10 12:5 13:14,17,19 14:3 15:5,8 20:22 37:13,24 38:3 45:18 48:13,19 52:3 53:14 86:21 88:21 90:21 97:13 98:21,24 113:24 114:20 116:5 147:12,15,21 149:9,13,13 152:5 173:8 187:20 191:23 192:2,7 201:8 220:19 222:17 order (12) 62:24 75:20 103:4 104:6 109:11 152:14 156:2 157:23 163:18 168:23 190:24 217:6 Orders (2) 121:5,9 ordinary (2) 325:25 339:8 org (4) 27:16 75:17 175:6 311:21 organization (5) 72:16 75:5 170:14 199:18 200:12 organizations (7) 76:5 125:5 168:21 170:5 212:3 232:3 255:4 orgs (1) 191:12 original (19) 65:18 241:6,7 257:9 274:4,6,11,25 276:17 300:20 304:13 306:14 308:24 328:19,24 332:8 334:11 336:23 338:16 originally (1) 287:11 outcome (1) 341:17 outside (4) 39:6 125:3,7,9 overall (4) 28:23 36:24 37:4	220:25 overdraft (9) 285:17,24 286:2,11 286:20 287:12,22 287:23 337:4 overnight (1) 288:13 over-the (1) 152:22 over-the-counter (30) 23:5 152:6,11,14,19 152:23,24 153:6,17 154:3,11 155:5,12 155:20,22 156:5,16 157:12,21 158:4,10 158:12,12,19,23 159:2,8 165:3,8,11 over-the-counters (1) 156:23 owe (7) 10:4 129:9,10,10 132:13 133:24 320:11 owed (6) 45:2,2 130:5 332:10 333:23 335:22 owned (2) 165:19 206:15 Oxford (332) 4:15 10:11 12:6 14:20 16:7 17:13,24 21:8 23:11,21 24:7 25:7 25:18,25 28:8,18 29:7,18 30:8,17 31:9,20 32:10 33:21 34:20 35:4,13 37:2 39:7 40:5,17,24 41:15 42:8 45:5,20 46:16 48:20 49:22 50:8 51:17 52:4 53:15 54:20 55:13 55:22 56:16 57:7,17 58:6,11 59:23 61:5 62:9 64:2,13,16 65:3,11 67:11 68:10 69:8,10,25 73:3 74:17 75:10 77:2 78:16,20,24 79:9,17 80:3,8,15 81:5,16 81:24 82:16,24 83:23 85:15 86:11 88:13,25 89:14,22 89:25 90:24 91:9 94:3,21 95:8 96:9
---	---	---	--	--

Contains Highly Confidential Portions

Page 24

96:24 97:16 98:7,23 104:24 105:11,23 108:3 109:13 111:3 111:15 112:6,13 113:10 115:2,21 116:17 117:4,11 118:8,20 119:6,16 120:4,16 122:4 123:18 124:17 125:20 126:15 129:23 130:9,13,21 131:2 132:2 135:5 136:3,15 138:15 139:9,16,21 140:3 140:20,23 142:12 143:15 144:8,22 145:7 148:12,21 149:5 150:9 151:10 151:16 152:20 153:14,21 154:4 155:6 156:6 157:4,8 158:2,17 159:9 160:11 161:4 162:5 162:23 163:10,20 166:10 167:2,13 168:3 170:17 172:9 173:17 174:7,18,22 175:14,22 176:9,19 177:7,14 179:17 181:9 182:9,24 183:25 184:12,16 184:20,23 185:8,21 186:8 187:4,14,22 188:22 189:10,22 191:3 192:4 193:7 194:15 195:2,21 196:10,21,23 197:14 198:14 199:3,22 201:4 202:15 204:14 205:13,23 208:2,20 209:9 211:5 213:2 214:9 215:5 217:23 218:10,21 222:10 223:2 224:2,16 225:5 226:7,16,21 227:2,19 228:12 229:13 230:14 231:9 232:17 233:5 233:19 234:19 237:11 238:17 239:12 240:3 243:17 244:5,15 245:5 246:13,21,25	247:15 251:17,23 252:4,7,15,18 257:10,19 259:10 261:3,10 263:9,15 265:23 266:13 267:25 270:7,21 272:11 273:18 276:11 277:14,18 277:23 278:5 279:23 280:14 283:21 287:5,9,20 289:2,11 294:22 299:2,14,18,23 300:2,7,11,18,24 301:7,10,17 302:4 302:12,18 303:21 304:4,7 305:7 308:10 309:16 310:11 312:3 313:13 317:10,12 318:18,20 321:4 322:15,20 325:10 326:24 327:16,22 329:5 337:17 o'clock (3) 270:9,10 271:22 P P (4) 3:3,3 4:2,2 page (97) 11:9 22:3 32:19 37:9 43:8,22 45:12,14,21 50:24 51:22,23 52:7 71:13 77:18,19 78:11 91:23,24 92:5 98:20 99:8 101:12 103:2,4,11,23 106:22 108:14 113:17,19 121:12 127:9,16,17 139:25 140:6,7 147:6 150:16,16,17,24 159:12 177:19,25 178:10,22 180:3 200:16,19 203:3,4,5 203:8,19,21 204:8 217:8,8,9 220:10 224:20 226:12 228:17 230:5 232:16 233:4,16,17 265:2,3,5 274:6 291:13,15 308:25 333:25 334:4 337:2	342:3,7 343:4,5,6,7 344:8,9,11,12,14,15 344:17,18,20,21,23 pages (6) 1:16 11:7 45:13 112:23 222:12 308:23 paid (17) 56:25 57:4 81:7 90:21 112:15 171:25 175:4,18 330:11,12 330:15,16,18,22,23 331:5,8 PaineWebber (2) 20:10 258:10 paper (1) 217:12 papers (2) 62:14 67:18 paragraph (64) 37:10 42:3 43:18,21 45:14,23 47:12 48:8 48:9 49:7 71:14,15 77:19 83:20,23,24 99:15,19 101:12,15 102:7 106:23 107:18 108:15 114:3 121:13 122:12 127:9,14,21 128:4 147:7,11 150:25 172:17 177:23 180:2 183:8 224:21 226:11,13 228:17 229:9,17 232:14,18 233:4 237:15 241:14,23 264:19,24 265:3 274:25 295:9 296:3 297:20 298:8 303:3 308:25 309:8 329:4 333:18 337:3 paragraphs (17) 47:25 48:3 99:10 113:20,23 121:25 122:6 123:7 127:12 127:19 274:5 297:11 306:13,14 308:23 328:19 330:3 parameter (1) 221:19 parameters (1) 221:6 Pardon (1)	51:3 parent (2) 96:4 106:4 parenthetical (8) 225:6,9 226:20,23 232:16 233:4,15,17 Park (1) 4:13 part (36) 36:23 38:10 39:25 41:10,25 49:24,25 98:10 126:21 155:19 176:16 190:3 197:18 200:8 201:10,13 202:3,16 202:17 222:15 223:6 228:5,22 232:24 239:7 240:2 243:3 246:16,18 247:22 254:11 258:11 260:4 295:13 296:7 306:8 partial (2) 296:10 303:4 PARTIALLY (1) 1:12 particular (9) 19:9 21:20 33:2 72:20 144:9 164:8 217:15 242:10 280:24 particularly (3) 32:7 35:2 65:7 parties (25) 39:11 63:24 69:21 72:19,25 74:8 104:21 105:7 119:21 120:9 123:11 191:19 207:18 208:17 209:8,20 210:3 217:19 218:5 220:6 228:9 229:9,18 239:8 341:15 partly (2) 159:16,18 parts (3) 201:6 237:16 311:17 party (7) 42:12 88:3 105:19,20 239:19 319:6 341:19 pay (19) 20:18 29:11 48:22 87:25 108:17 112:3	112:9,18,21 113:7 113:13 116:7,9 135:18,20 137:8 171:12 215:24 338:2 payable (4) 223:7 330:20 333:3 335:15 payables (2) 49:6 331:13 paying (5) 113:8 116:23 138:5 171:23 337:15 payment (5) 52:11 90:17 109:3 239:5 284:21 payments (1) 52:9 pays (1) 87:22 pay-back (2) 88:17,18 pay/collect (1) 91:4 pay/collects (1) 88:17 Pearl (1) 3:13 Peck (1) 77:12 people (26) 9:13 23:16 24:2,11 58:18 62:14 112:25 113:4 136:7 137:8 155:21 157:14 161:7 184:4 197:5 214:4,6,17 243:19 245:10 254:15 287:17 312:19 322:7,7 334:17 percent (4) 28:12 29:13,15 51:11 perfectly (1) 231:6 perform (3) 44:2 250:23 251:14 performed (9) 44:3 251:22 252:12 266:11 267:4 296:8 296:10 297:18 303:4 performing (3) 258:3 277:21 296:23 period (14)
---	---	---	---	--

Contains Highly Confidential Portions

Page 25

64:8 97:9 102:20 147:25 148:15,19 149:15 183:5 214:14 266:19,22 266:23,24 282:3 person (4) 80:16 162:12 254:3 276:23 personal (1) 68:6 personally (2) 75:6 253:24 personnel (2) 329:12 331:22 persons (1) 278:2 perspective (2) 27:22 103:6 pertaining (1) 133:5 pertains (2) 339:22,25 Peter (1) 329:24 Phase (1) 28:13 phrase (9) 33:19 206:23 227:12 227:14,16,17 229:10,18 334:2 picked (1) 292:19 piece (3) 59:6 91:4 217:12 pieces (2) 59:7 112:20 Pineiro (1) 5:7 place (13) 10:2 13:6 36:13 68:2 68:9 77:12 82:8 87:8 93:17 125:22 162:18 169:7 248:7 placed (6) 149:17 248:4,10,11 248:13 259:16 places (1) 202:6 plans (1) 192:17 play (1) 149:22 Plaza (2) 3:22 4:13	pleadings (2) 41:13,22 please (16) 5:11 6:17,21 32:19 50:25 51:16 54:11 77:10 89:2 91:23 113:18 229:5 299:24 300:3 323:15 328:5 pledged (5) 40:11,15 220:18 222:17 223:21 plenty (2) 93:24 170:2 plus (1) 112:18 point (65) 6:16 13:12 15:10 21:15 26:7 39:23 63:18 67:20 73:12 73:22,25 81:14 82:4 87:10,12 88:7 90:11 97:24 101:6 105:17 116:18,20 119:19 124:23 138:2,9,10 177:23 194:11 196:6 197:4 198:19 199:24 209:15 210:20,21 264:21 265:9 269:13 270:2 272:15 282:13 283:16 289:22 294:12 298:24 309:10 313:19,20 313:24 315:9 318:3 318:11,19,22,25 320:14,19 321:13 322:22 331:13 333:3 334:13 336:5 338:4 pointed (1) 212:9 pointing (1) 303:15 points (4) 26:21 208:4 273:11 285:9 policy (1) 307:11 portfolio (45) 14:5 19:23 38:10,17 114:15 115:5,6,25 116:2 150:12 151:5 151:9,15,23 152:3,5	153:3,12,18 154:2,3 154:18 155:3,24 156:9,11,19 157:18 157:23 162:13 163:12,13,14,19 164:8,15,21,24,25 165:7 167:16,22 169:6 185:15 201:14 portfolios (1) 163:15 portion (19) 9:23 15:11 22:2 48:9 51:5,7 77:14 97:18 97:19 150:4 167:12 202:13 247:22,24 291:15 303:6 305:17 326:11 328:5 portions (2) 291:23 305:19 posed (1) 111:19 posing (1) 193:25 position (42) 23:10 24:21 27:17 61:2,7 103:24 105:7 138:3 149:20 150:6 152:3,14,15,16,17 152:23,25 153:25 154:11,12,14 159:4 159:7,8,11 160:4,19 163:12 164:16 165:17,18 171:7 206:20 249:19 250:7,9 253:12 268:11,22 311:24 326:17 327:4 positions (245) 14:16 15:6,8 20:2,3 21:21 32:13 33:13 36:16 38:14,23,24 38:25 39:2,5,15 40:2,3,15 41:25 42:7,17 44:8,17,23 45:4,11,16,18,25 47:15,18 48:7,12 52:10,23 53:14,23 54:3,10,14 57:5,15 57:22,24 58:22 59:4 60:8,12,13,14,17,21 60:22 61:25 74:19 75:12 76:2,6,9,12	76:14,25 77:25 78:15 80:6,9,11,13 80:21,22,24 81:14 81:18,19,22 82:21 82:23 85:19 86:10 86:25 88:23,24 89:5 89:6,10 90:4 95:13 96:13 97:13,13 98:6 109:12 113:24 115:7,8,14 116:3,4 116:5,6 117:19,24 118:2,7,12,17,19,23 119:4,5 120:3,6,8 120:20 121:18,22 122:16,25 123:25 124:6,9 125:6,25 126:10,19,22 128:6 131:20,24 132:7,11 133:3 134:15,22 136:17,20,24 137:18 138:17,21 140:12 143:19,20 143:25 144:4,6,13 147:24 148:10,14 149:3,4,8,13,14,16 149:25 150:21 151:3,4,12,13,14,21 151:23 152:6,8 153:12 155:17,19 156:13,16,16,23 157:2,3,5,7,16,22 158:7,9,14 159:2 162:3,14 163:7,7,8 164:11,12 165:2,3,9 165:12 167:8,15,17 167:18,24 168:2 171:5,6 178:24,25 180:7,8,15,17 181:15 182:14,14 183:19,21 184:8,18 185:2,6 186:4,13,19 186:25 187:2,3,12 187:19,20 188:17 190:12,15,17,19,25 191:9,9,11,14,15 222:25 224:15 236:13 252:20,23 254:7 positive (2) 38:4,8 positives (1) 115:20 possession (1) 169:3	possibility (1) 158:25 possible (29) 31:15,24 32:3,12 36:14 49:16 50:3 55:25 63:24 103:20 104:14 151:20 153:20,22 166:25 167:7,14,20 168:9 168:12,15 177:12 184:6 215:2 217:18 218:16 221:22 230:24,25 possibly (12) 26:5 38:15 41:9 42:16 59:24 85:24 93:18 164:2 201:14 255:21 322:8 331:7 post (7) 168:19 169:9,13,16 169:16,19,25 posted (59) 31:19 32:2 75:19,24 107:23 108:2 109:20,23 110:19 110:22 111:11 114:16,21 115:10 115:16 116:8,16 117:2 119:3,24 123:14 142:24 166:24 167:11,23 169:11,21 170:3,15 170:23 175:11 181:7 183:20 185:19 186:3 187:3 190:22 198:13 199:18 200:3 205:9 205:19 206:5,12 207:6,12 213:21 225:10,11 227:6 228:14 231:13 232:10,13 233:25 234:2,3,5,15 postgraduate (2) 249:5,5 posting (1) 200:10 postponed (2) 73:12,15 potential (9) 30:20 82:9 99:23 101:6 112:4,22 131:9 142:18 183:11
---	--	--	--	---

Contains Highly Confidential Portions

Page 26

<p>potentially (5) 179:11 180:25 181:18 182:6 183:12</p> <p>power (1) 105:21</p> <p>powers (2) 108:25 172:24</p> <p>practice (5) 170:13 243:13 273:21 273:21,23</p> <p>practices (5) 241:19 242:15 243:23 244:19 253:13</p> <p>precisely (1) 47:18</p> <p>preliminary (1) 215:12</p> <p>premarked (2) 70:9 247:8</p> <p>premium (9) 108:17 112:3,11,12 112:15,21 113:7,8 113:13</p> <p>preparation (7) 7:22,25 8:24 9:10 12:20 71:7 243:5</p> <p>prepare (2) 7:14 192:7</p> <p>prepared (8) 63:9,22 70:20,24 71:2 83:11 102:23 266:4</p> <p>preparers (1) 329:13</p> <p>preparing (15) 43:5 50:16 52:16 65:14 70:15 71:8,20 83:7 100:7,7 106:25 146:17,20 168:25 245:10</p> <p>prescribes (1) 164:23</p> <p>present (2) 64:25 65:22</p> <p>presented (1) 54:16</p> <p>preservation (1) 79:7</p> <p>preserve (5) 79:12 109:12 190:12 190:19,25</p> <p>preserved (1) 79:15</p> <p>preserving (1) 191:11</p>	<p>president (2) 178:14 255:9</p> <p>pressing (1) 163:17</p> <p>presume (1) 48:8</p> <p>pretty (1) 94:8</p> <p>prevent (1) 337:14</p> <p>preventing (1) 315:4</p> <p>previous (1) 309:21</p> <p>price (9) 15:14,15 20:20 85:22 112:18 113:16 188:6,14 216:20</p> <p>pricing (1) 30:23</p> <p>primarily (2) 13:16 137:10</p> <p>prime (7) 13:13 14:11,18 15:20 96:15 258:15 274:8</p> <p>Principal (1) 253:17</p> <p>principle (1) 309:14</p> <p>print (1) 162:21</p> <p>prior (42) 18:20 58:16 59:13 67:15,23 104:13 123:11 146:23 148:10 195:11 202:23 203:19 215:13 245:22 254:6 258:25 266:5 266:11,20 267:4 270:4,19 310:23 311:3,13,25 312:7 316:8 319:5,17 324:21 325:12 326:6,8,18,20 327:5 327:6 335:18,25 336:9 339:17</p> <p>priorities (1) 54:25</p> <p>priority (3) 55:9,15 79:19</p> <p>private (2) 241:16 310:9</p> <p>privilege (1)</p>	<p>252:6</p> <p>privileged (2) 252:4 276:10</p> <p>privileges (1) 172:24</p> <p>proactive (1) 189:15</p> <p>probably (26) 16:8 17:10 18:22 33:3 33:4 41:23 45:20 52:18,19 56:18 68:21 78:7 98:3 145:5 157:16 164:3 165:13,22 184:3 198:22 211:6 225:15 257:13 258:20 298:23 310:24</p> <p>probing (1) 193:21</p> <p>problem (2) 96:3 183:2</p> <p>problems (3) 25:16 27:4 95:19</p> <p>Procedure (1) 341:21</p> <p>procedures (2) 24:12 189:11</p> <p>proceeded (2) 74:16,21</p> <p>proceeding (1) 77:13</p> <p>proceedings (3) 55:11 56:8 118:18</p> <p>process (20) 18:25 19:5 21:3 36:21 49:18 50:5 162:2 172:3 245:10,11 268:16 294:18,21 294:24 295:2,3 311:14 316:25 328:21 337:24</p> <p>processes (1) 24:12</p> <p>processing (2) 244:3,22</p> <p>produced (3) 261:19 280:15 302:20</p> <p>producing (1) 21:13</p> <p>product (1) 21:4</p> <p>PRODUCTION (1) 343:3</p>	<p>professional (5) 2:8 252:9,23 254:19 255:3</p> <p>professionals (5) 12:25 17:2 18:14 262:6,8</p> <p>proffered (1) 252:13</p> <p>profile (8) 23:10,15,19 97:12 98:5 162:13 163:18 165:6</p> <p>profit (2) 59:3 88:24</p> <p>profitable (2) 59:6,7</p> <p>program (2) 101:16 148:25</p> <p>programmer (1) 245:3</p> <p>progress (1) 338:19</p> <p>proof (2) 336:3,4</p> <p>proper (1) 79:25</p> <p>properly (7) 21:11,14,18 81:7 94:25 286:5,11</p> <p>property (66) 129:19,21 133:2,4,12 133:14,17 135:4 220:18 222:24,24 223:24 224:3,13,24 225:4,18,19,22,25 226:3,4,24,25 227:3 227:5,6,10,11,13,18 228:2,14,18 229:2 229:10,11,19,20 230:6 231:24 232:6 232:7,10,12 233:18 233:21,22,24 234:6 234:11,16,20 241:19,20 242:24 243:24 244:20 253:14 259:3,4,5,7 259:12 292:2 328:20</p> <p>propose (1) 192:12</p> <p>proposed (4) 78:23 79:21 104:2 332:9</p> <p>proprietary (50)</p>	<p>13:17,18 14:5,16 15:5 15:13 19:23,25 20:22 24:6 38:3,3 76:25 80:6,20 106:17,18 107:5,13 113:24 114:20 120:6,23 121:18 122:16 123:17,21 123:23,23 125:2,23 126:12 144:7 150:19 151:9 183:19 188:18 190:15,17 191:8,14 202:3,16 206:21,24 224:14 291:17,25 292:3 335:13</p> <p>propriety (1) 337:21</p> <p>prospect (1) 281:9</p> <p>protect (3) 10:13 129:5 167:19</p> <p>protected (3) 131:22 132:12 186:20</p> <p>protecting (2) 79:3 239:3</p> <p>protection (23) 9:22 55:6 117:7 126:20,25 128:21 130:16 135:3 166:24 167:11,24 241:18,21 242:24 243:25 251:9 256:7 266:5,7 282:23 291:9 316:5 342:22</p> <p>prove (1) 334:15</p> <p>proven (2) 34:24 334:23</p> <p>proves (1) 334:21</p> <p>provide (9) 8:12 53:19 100:21 163:5 171:17 216:6 252:9 257:17 302:6</p> <p>provided (14) 52:8 99:24 127:3 163:3 207:2 219:11 251:6,7 262:6 275:10 281:4,15 331:21,25</p> <p>providing (5) 41:2 56:20 100:18 117:7 193:19</p>
--	---	---	--	---

Contains Highly Confidential Portions

Page 27

<p>provision (1) 174:12</p> <p>proxy (3) 85:23 86:5 87:4</p> <p>prudent (6) 172:5 211:16 238:14 239:11,14,16</p> <p>public (8) 2:11 5:16 12:13,14 64:9 241:15 251:11 341:6</p> <p>publications (1) 257:4</p> <p>published (1) 35:25</p> <p>pull (2) 46:15 99:5</p> <p>purchase (19) 13:16 25:14 39:11 41:11 63:3 104:18 197:6 200:15 203:6 207:16,21 212:25 216:7 217:2 238:6 247:2 258:21 315:7 315:24</p> <p>purchased (17) 16:24 152:13 197:8 203:7,10 204:9,11 207:24 209:2 210:25 211:13 213:14,17 224:22 246:4 258:15,18</p> <p>purchaser (11) 100:22 108:16,23 109:4,5 151:2 197:19 216:25 228:21,24 232:24</p> <p>purchases (1) 258:20</p> <p>purchasing (11) 116:6 155:9 159:15 171:20,21 172:13 213:4,5,24 214:3 217:4</p> <p>purely (1) 247:10</p> <p>purple (1) 248:19</p> <p>purported (1) 261:19</p> <p>purporting (4) 242:25 244:2,21 246:10</p> <p>purpose (3)</p>	<p>48:24 265:9 309:10</p> <p>purposes (5) 21:12,12 182:2 285:8 313:2</p> <p>pursuant (3) 121:5 127:20 341:20</p> <p>pushed (1) 73:22</p> <p>put (35) 149:23 150:12 152:2 154:17 206:13 210:11,19 211:7 215:18 216:20 223:8 224:18 241:2 259:8 267:20 274:5 274:18 282:24 299:16 308:13 310:18,20 313:4 315:13 319:9 320:3 320:4 321:16,19 324:16 326:14 327:2 328:11 332:17 334:9</p> <p>puts (2) 32:15 91:3</p> <p>putting (10) 143:18 242:11,14,18 256:17 307:24 308:14 317:15 320:21 334:19</p> <p>P&L (1) 53:3</p> <hr/> <p>Q</p> <hr/> <p>qualified (5) 160:7,24,25,25 263:25</p> <p>qualifies (1) 8:21</p> <p>qualify (1) 98:5</p> <p>qualities (1) 10:23</p> <p>quant (1) 97:2</p> <p>quantifiable (1) 97:10</p> <p>quantify (2) 145:3 197:19</p> <p>quantity (1) 134:14</p> <p>quants (1) 23:16</p> <p>question (105)</p>	<p>6:8 14:23 30:9 35:6 40:13 51:19 52:6 54:12 64:14,19 65:7 71:5 79:10 80:10,11 85:16 89:3 103:3,13 103:19 109:17 110:15,16 111:4,7 111:18,19,23,25 115:3 128:20 139:2 139:3 143:23 151:17,19 152:21 153:15 154:10 163:23 169:15 170:18,20 173:18 179:5 180:4 181:3 182:3,12,17 183:3 184:13,21 188:24 189:4 192:9,10,12 195:4,4,6,8,9,10,11 195:13 205:17 216:23 220:12,22 221:9,20 222:22 226:17,19 229:16 232:5 234:10,10,13 244:16 246:15,21 251:18,24 256:3 261:4 262:2 270:17 277:3,15,25 283:22 285:12 287:15,16 287:16 294:23 297:6 307:15 312:5 323:15 324:9 326:25 327:21</p> <p>questioning (1) 246:23</p> <p>questions (12) 6:6,21 64:10 113:19 193:18,25,25 247:6 276:20,21 299:20 340:7</p> <p>question?because (1) 35:5</p> <p>quick (2) 12:22 302:24</p> <p>quicker (1) 247:5</p> <p>quickly (3) 93:11,22 144:25</p> <p>quickness (1) 92:12</p> <p>QUINN (1) 4:4</p> <hr/> <p>R</p> <hr/>	<p>R (2) 3:3 4:2</p> <p>raise (3) 29:12,14 237:6</p> <p>ran (1) 20:24</p> <p>range (3) 98:3 256:23 305:14</p> <p>ranges (1) 305:13</p> <p>rank (1) 17:12</p> <p>rate (1) 17:21</p> <p>rateably (1) 55:16</p> <p>rates (2) 42:16 89:20</p> <p>rational (46) 69:6 82:2 88:20 107:24 109:11,21 110:20 111:12 113:7 114:4 115:18 116:24 118:15,21 119:2,14 120:14,17 142:4 143:9 177:20 184:17 185:5 190:8 190:23 193:20 194:5,6,7,8,9,10,13 194:19,21 195:17 196:3,5,11,16 197:2 197:10,19,21 198:11,16</p> <p>rationale (1) 36:22</p> <p>reach (1) 327:23</p> <p>reached (2) 325:6 326:19</p> <p>react (1) 196:7</p> <p>read (43) 41:4,22 42:20 50:17 51:16,19 52:5,16,18 52:19 63:3,4,4,5 67:17 77:8 83:19 99:10,11 100:6,9 101:14 104:20 105:2,3 109:15 111:20 121:25 122:6,9 127:15,19 184:24 219:14,23 219:23,24 226:9 229:5,24 230:13</p>	<p>297:11,14</p> <p>reading (8) 42:19 52:25 103:10 111:5 112:23 183:7 219:20 222:12</p> <p>reads (3) 217:10 228:18 232:22</p> <p>ready (1) 70:11</p> <p>realizable (1) 319:10</p> <p>realize (3) 51:3 174:6 245:8</p> <p>realized (1) 170:22</p> <p>really (7) 25:2 151:18 181:22 194:13 209:13 225:7 227:6</p> <p>realm (3) 120:12 154:23 158:25</p> <p>Realtime (1) 2:10</p> <p>reap (1) 109:4</p> <p>reason (30) 39:19,22 53:21,25 55:25 57:2 78:9 142:17,21 147:17 148:4 158:4 167:7 168:10 188:20 189:7 190:10 316:13 344:5,8,9,11 344:12,14,15,17,18 344:20,21,23</p> <p>reasonable (2) 113:6 153:10</p> <p>reasoning (1) 323:22</p> <p>reasons (2) 219:4 339:23</p> <p>rebuttal (27) 240:15 241:12,23 264:18 274:16 276:18 292:5 294:14 295:6,10 296:3 297:20 298:9 299:24 300:12 303:3,6 304:14,15 306:12 308:23 309:9 330:3,6 332:13 338:22 342:20</p> <p>recalculation (9)</p>
---	---	--	---	--

Contains Highly Confidential Portions

Page 28

<p>296:10,17,20 297:19 298:8,10 303:4 326:22 327:8 recall (17) 39:10,14 68:24 72:22 78:5 85:7 106:14 140:13 141:8 146:20 206:23 213:10 221:25 222:3,4 257:13 322:3 receipt (1) 172:19 receipts (1) 288:14 receivable (16) 48:14,17,21 50:14 52:12 53:2,6 128:16 133:21 134:8,18 206:17 310:19 311:21,22 325:21 receivables (4) 49:5 53:10 57:11 311:18 receive (17) 43:25 58:19 79:4 130:17,18 135:2 228:24 229:6 236:21 238:12,22 249:8 263:20 304:22 313:4 316:4 328:10 received (6) 37:22 81:8,10 99:20 135:4 279:9 receiving (3) 58:20 116:22 210:13 recess (8) 46:20 77:10 91:17 145:11 199:10 240:8 299:10 338:9 recession (12) 136:12,25 137:4,8,9,9 137:14,15,22 138:4 139:5,13 recharacterize (1) 271:4 recipient (2) 236:20 237:5 reclassified (1) 298:22 recognize (3) 42:25 83:5 224:6 recognized (1)</p>	<p>52:13 recognizes (1) 37:11 recollection (2) 78:6 100:15 recommendation (1) 104:8 reconcile (1) 330:14 record (37) 12:7 46:19,23 48:21 53:12 90:9 91:13,16 91:20 111:5 140:23 145:10 146:7 148:7 199:9,13 226:22 238:20 239:19,22 240:4,7,20 241:4 251:11 252:17 299:6,9,13,15,16 304:3 338:8,11 340:10 341:12 344:6 recorded (6) 21:18 37:23 51:13 52:25 90:5,6 records (4) 13:5 25:16 213:7 333:3 recourse (9) 172:22 173:15 174:2 176:18,25 177:2,5 177:10,13 recover (2) 56:4 118:6 redacted (2) 305:17,19 reducing (1) 317:16 REED (1) 4:11 refer (6) 227:22 232:25 285:16 306:15 309:19 328:20 reference (18) 45:12 127:24 180:22 183:4 209:7 210:2 211:3,16,19 212:14 213:13 223:5 225:24 226:2,4,23 227:17 274:24 referenced (4) 42:2 43:17 202:10 299:19</p>	<p>references (4) 32:22 207:8 208:18 225:21 referred (6) 232:19 274:8 300:8 301:11 304:12 336:22 referring (36) 31:2 47:19 83:22 92:8 125:8 127:25 161:5 179:22 180:4,10,11 180:12,17 181:14 181:15,24 182:21 203:18 223:13 230:2,21 231:6 233:9,10,18 244:7 253:5 262:9 276:3 278:10 279:24 282:6 296:4 298:16 298:19 307:5 reflected (1) 252:24 refresh (2) 78:5 100:14 refuse (1) 28:15 refused (5) 35:23 36:6 60:7,10 61:16 regard (4) 26:13 28:21 61:8 173:6 regarding (16) 9:4,5,13 65:12,12 100:10 239:4 241:20 243:23 244:19 246:3 251:9 253:13 285:17 292:6 339:18 regardless (2) 44:18 142:20 regards (1) 284:24 registered (5) 2:8,9 241:18 242:23 341:5 regular (1) 254:12 regulated (1) 27:15 regulation (2) 290:17 337:13 regulations (2) 26:19 128:8</p>	<p>regulator (1) 27:15 regulators (5) 9:3,17 26:25 253:20 269:25 regulatory (7) 16:20 18:5 20:13,24 20:25 242:12 250:8 reimburse (1) 118:18 rejecting (1) 217:11 relate (3) 7:9 9:14 252:12 related (5) 40:22 41:13 158:13 335:12 341:15 related-costs (1) 52:11 relates (5) 30:15 126:18 247:12 247:23 295:6 relating (8) 37:12 48:12 247:7 256:14 274:7 292:10 338:15,20 relation (9) 43:17 65:20 138:16 180:4,20 247:25 248:9 278:18,21 relationship (5) 28:23 149:2 156:15 158:16,20 relationships (2) 157:20,24 relative (4) 17:5,6 41:20 55:11 relaying (1) 73:5 relevance (3) 31:21 32:16 283:4 relevant (7) 138:10 264:21 265:9 265:14,21 274:24 309:9 reliance (9) 8:8 219:17 246:18 248:4,7,10,11,13 302:19 relied (8) 8:3 219:15 276:13,15 302:8 304:6,8,10 Relief (3) 121:4,6 342:12</p>	<p>relieve (1) 83:3 rely (7) 224:9 261:17,19 276:23 281:9 291:19 304:25 relying (2) 281:11 326:12 remained (1) 49:13 remedies (1) 172:24 remember (19) 8:5,15 15:9,12 16:9 23:6 41:3 70:17 87:3 94:25 98:2 107:3 219:20,22,23 257:14 260:12,16 260:17 remind (1) 67:6 remove (1) 334:18 removed (4) 282:20,25 332:17 333:4 remunerated (1) 118:25 repeat (4) 35:5 49:21,24 52:5 rephrase (4) 6:22 64:19 89:2 170:19 replicate (1) 150:13 repo (10) 38:19 39:6 40:11,16 40:23 41:7,14,20 117:14 206:17 report (96) 6:25 7:5,9,25 8:10,17 10:7 32:17 37:10 42:3 43:5,18 45:9 45:14 47:13 50:16 52:17 57:13 62:19 63:9,23 68:22,25 70:20 71:8 83:11 91:23 98:20 100:8,9 108:14 113:18 120:5 139:25 146:24 150:15 159:13 165:6,9 177:19 197:9 213:9 213:11 225:7</p>
--	--	---	--	---

Contains Highly Confidential Portions

Page 29

<p>240:15 241:12,23 245:10 251:6 260:21,25 261:5,21 264:18 274:4,7,11 274:16 276:19 277:6 279:19,24,25 280:5,13,17,19,20 281:8 285:16,19 287:10 292:5 294:14 295:7,8,10 297:20 298:9 299:24 300:13 302:22 303:7,9 306:13,14 308:23 308:24 309:22 330:5 332:13 333:24 337:6 338:22 342:8,20</p> <p>reported (2) 1:23 334:3</p> <p>reporter (7) 2:9,9,10,11 5:9,11 341:6</p> <p>Reporting (2) 5:8,10</p> <p>reports (30) 7:16 8:2,4,25 9:20,21 10:9 20:25 62:13 98:16 165:13 214:19 240:25 247:8 253:6,18,23 256:14 257:7 265:25 276:25 278:22 280:18,21 280:22 282:17 285:21 292:23 301:25 309:19</p> <p>represent (2) 5:23 280:15</p> <p>representation (4) 172:22 173:16 174:2 252:17</p> <p>represented (1) 235:25</p> <p>representing (5) 72:6,7 105:8 240:24 252:10</p> <p>reputation (1) 24:18</p> <p>Reputational (1) 24:16</p> <p>request (3) 257:21 296:9 305:7</p> <p>requested (2)</p>	<p>168:14 341:19</p> <p>requesting (2) 296:20 303:16</p> <p>REQUESTS (1) 343:3</p> <p>require (8) 21:7 156:12 196:8 232:3 290:17 319:14 327:8 333:17</p> <p>required (45) 10:10,13 98:8 121:16 121:21 122:15,24 124:5,8,15 125:4,16 125:25 126:10,14 129:4,12,14,15,17 130:4 135:14 140:11 142:25 196:17 244:8 249:12 263:7 267:7 267:12,22 269:9,11 269:14,17 271:18 272:22 284:3 290:12,15 293:4,13 293:17 317:23 339:9</p> <p>requirement (34) 10:19 28:12,13 33:10 34:17 35:11 36:25 84:3,12,21 86:4,17 129:25 130:3,4 131:10 141:9,21 143:10,22,24 144:3 186:2 249:15 263:19,23 264:3,6 266:4 298:10 307:14 317:17 325:13 326:22</p> <p>requirements (37) 9:14 26:11,16,20 27:2 28:6 29:13 30:15 31:4 32:9 35:25 36:17 83:15,21 85:14 124:8,13,22 126:18 130:12 138:6 140:17 142:6 142:9,16,21 143:4 143:13 144:19 168:22 170:16 200:11 208:14 212:7 242:12 284:12,19</p> <p>requires (4) 9:24,24 10:19 319:4</p>	<p>reran (1) 303:18</p> <p>reread (1) 7:16</p> <p>rerun (3) 303:9,12,16</p> <p>research (2) 297:23 305:22</p> <p>researching (1) 294:9</p> <p>reserve (50) 9:11 10:19 26:17 243:20 244:4,7,10 244:23 247:12,14 253:21,25 259:2,9 259:14,17,18,22 260:4,5,19 263:2 265:10 266:4 267:22 271:6 289:17 290:10,18 290:21 291:22 292:15 293:5,13,24 296:11 297:19 302:10 303:4 307:19,25 309:4,11 310:15 313:2 314:2 314:14 331:20 334:3 337:16</p> <p>Reserves (2) 291:10 342:22</p> <p>resolution (1) 120:14</p> <p>respect (23) 15:24 28:21 40:10,15 42:6 44:4 45:15 55:2 61:3 68:5,19 93:6 172:25 173:3,4 173:7 199:19 224:14 236:14,17 236:23 237:10 326:10</p> <p>respectively (1) 128:10</p> <p>respects (3) 10:12 12:25 14:3</p> <p>responding (1) 236:20</p> <p>responds (1) 179:7</p> <p>response (4) 103:19 104:13 181:3 299:19</p> <p>responses (1) 6:13</p>	<p>responsibility (25) 44:7 50:12 53:8 57:6 57:22,24 58:2,21 59:9 60:7,10 61:17 87:13 118:2,12,16 120:2 130:11 232:9 232:11 241:17 242:23 253:19 336:14,15</p> <p>responsible (9) 8:24 9:10 13:3 24:3 24:11 44:16,20 129:8 331:22</p> <p>rest (3) 34:23 37:7 226:9</p> <p>restrictions (2) 314:18,21</p> <p>result (6) 107:22 109:19 110:18 111:10 296:12 326:21</p> <p>resulted (2) 78:2 89:12</p> <p>resumed (1) 146:3</p> <p>resumé (5) 248:18,21 252:25 253:3,3</p> <p>retained (2) 8:11 252:8</p> <p>retroactive (2) 326:22 327:8</p> <p>retroactively (1) 326:5</p> <p>return (9) 133:18 171:22,24 228:8 232:9,11 281:2 319:12 328:11</p> <p>revealed (1) 296:12</p> <p>revenue (1) 16:18</p> <p>revenues (1) 113:2</p> <p>reverse (1) 206:17</p> <p>review (58) 7:24 12:3,22,22 16:17 18:3,10 19:9 25:21 25:24 32:20 43:4 48:3 50:15 59:21,24 60:2 62:18,20,24 66:22 70:10,12,14</p>	<p>71:6 77:14 83:7,10 99:13 103:3,16 105:16 113:21 122:3,8 127:6,11,18 147:7,9 168:17 235:5,7,8 243:8 248:5,14 285:23 296:7 297:13 301:18,24 302:7,19 304:9 306:3 323:21 341:19</p> <p>reviewed (30) 8:6 13:11 16:15,16,19 16:25 18:4,4,14 62:20,22 70:19,23 71:2,8 76:13 77:16 169:2 206:25 224:11 246:17 275:14 279:15 286:20 293:7 301:22 307:2 326:10 329:12 337:23</p> <p>reviewing (11) 10:4 13:21 17:22 20:8 39:10 59:15 66:18 93:16 255:21 285:8 293:8</p> <p>reviews (2) 9:7 11:2</p> <p>revoked (3) 285:4,13,14</p> <p>reward (1) 58:20</p> <p>rewards (3) 58:19 160:3,23</p> <p>re-read (1) 205:17</p> <p>rich (1) 221:5</p> <p>rid (1) 106:9</p> <p>right (66) 7:6 21:17 52:19 66:23 74:6,7 75:11,16 82:15 89:7,8,9,13 96:23 106:14 107:2 109:12 111:2 113:25 120:3 123:16 127:13 133:15 134:16 135:21 141:6 142:25 174:6 176:8 186:15 188:15</p>
--	---	---	--	---

Contains Highly Confidential Portions

Page 30

189:3 195:8 207:2 207:20 211:23 220:8 222:4,19 226:6 232:7 242:21 245:7 249:16 250:19 253:10 256:15 258:23 292:9 299:22,25 300:22 301:14 307:6 308:21 312:15 313:3 315:11 316:3,7,15 321:18 322:11 323:17 335:23 338:13 rights (14) 29:4 75:9 88:23 172:23 173:7,14 220:17 311:9,22,25 313:10 318:7,23 320:15 RISC (10) 245:20 328:25 329:6 329:12 330:5 331:2 331:9,16,21,22 risk (92) 23:9,14,15,19,25 24:2 24:5,9,10,12,16,18 25:2,3 35:2 45:15 56:9,11 57:14,20 58:9,15,18,25 59:7 96:7,11,12,22,23,25 97:3,12 98:5,11,12 98:14,15,16 134:25 135:3,25 136:4,12 136:16 137:25 138:7,20 142:9,18 142:19 143:12 145:2 147:22,24 148:9,16,18 150:18 158:7 160:2,22 161:9,10,13,19,23 162:2,7,10,12 163:3 163:6,9,18 164:2,8 164:15,17 165:6,16 165:24 166:18,21 166:23 167:24 181:8 186:24 187:7 189:25 197:20 217:10 risks (6) 24:13 97:9 137:23 138:11 139:7 167:12	risky (9) 57:18 96:14,16,18,21 97:4,4,5,6 risk-manage (1) 148:14 RMR (1) 1:24 Robert (3) 297:4,7 342:24 role (3) 20:15 21:7 178:20 roll (1) 149:6 Romain (6) 50:21 51:10,23 52:9 53:16 342:10 Romain's (3) 50:15,23 51:20 Rosen (3) 71:25 72:2 73:6 rough (1) 66:15 roughly (2) 77:21 302:11 RPR (1) 1:24 rule (32) 32:22 33:2,9 34:7 121:7 244:8 255:15 255:25 258:25 259:8,23 262:25 264:13 267:11,16 267:18,20,21 268:4 269:15,17 271:24 291:10 311:16 319:4 326:11,13 329:2 339:21 341:20 342:21,23 rules (24) 6:5 9:23 10:8,10 26:19 55:6 241:17 241:21 242:22 243:2,8,9,25 244:21 248:6 253:15 256:6 256:7 264:15 320:23 337:18 339:16,18,24 running (1) 273:2 R-I-S-C (1) 245:20 <hr/> S <hr/> S (5)	1:24 2:7 3:3 4:2 341:5 sake (1) 110:8 sale (34) 36:22 43:23 77:14 78:23,25 79:22 99:6 101:4,17 102:5,8 103:25 104:19 106:8 121:5,9 123:12 173:13,22 174:4,10 175:9,17 175:24 183:7 193:3 196:12 197:6 217:5 220:15 224:18 320:19 323:8 324:2 sales (1) 188:13 sat (2) 246:6,22 satisfied (4) 168:23 335:18,25 336:9 satisfy (4) 30:21 55:18 170:16 200:11 Saturday (2) 270:13 324:18 save (1) 262:24 saw (20) 46:8 78:8 88:16 95:25 97:24 106:11 113:4 118:11 136:6 146:22,23 148:18 148:22 208:14 210:24 297:21 307:21 333:21 335:3 336:3 saying (46) 35:17 68:24 73:9 102:4 105:4 113:13 154:22 157:10 158:24 171:22 175:13 181:2 183:11 188:24 200:20 210:5 218:12 221:15 223:5 236:25 237:15 238:9 264:2 272:21 282:12 283:9,12 287:11 288:16 296:16 304:5 311:12 312:17 315:19,22	316:6 317:18 318:5 320:16 321:10,14 325:5 326:7 328:13 330:22 331:4 says (65) 43:8,22 49:8 51:10 52:9 53:17,20 57:18 61:12 71:17 78:17 83:25 99:15,19 100:17 101:10 102:7,17 103:18 104:7 106:23 107:10 121:14 122:17,21 124:2 126:7 128:5,13 147:12,20 150:17 172:17 180:24 182:5 203:10,25 207:22 208:24 220:12,16 221:9,12 221:12 222:20,22 224:23 226:11,13 227:3,13 228:24 229:22 236:10 237:24 246:22 248:23 265:8 268:5 268:7 269:13 273:10 291:17 297:17 321:12 SBC (2) 20:12 258:8 schedule (3) 46:7 262:6 304:18 Schiller (3) 2:6 3:11 5:23 Schwab (3) 13:25 15:4,17 science (1) 248:23 screens (6) 282:10 288:10,20 289:3,5,8 se (1) 16:17 SEA (2) 291:10 342:23 SEC (34) 9:5,17 241:17,18,21 242:22,23 243:25 244:8,20 253:14 255:14 258:25 259:8,23 262:25 263:20,23 264:3,7 264:13 267:20	269:11,14 271:4 307:9 319:4 326:11 326:13 337:13,18 339:16,18,21 second (17) 71:13 91:25,25 99:15 101:14 106:22 126:21 128:4 129:13 131:13 147:6 200:18 237:14 239:25 264:20 265:8 271:20 secret (1) 26:23 section (7) 12:10 122:7 128:9 209:7 211:4 336:22 338:16 sectors (1) 241:16 secure (41) 9:25 121:9,17,21 122:15,25 124:5,9 124:15 125:6,17,25 126:10 133:3 140:11 167:23 186:4 187:3 198:13 199:24 208:5 213:21 222:25 224:14,24 225:11 225:16 227:13,23 228:5,14,20 229:3 231:24 233:23 234:7,11,16,21,22 287:23 secured (22) 8:25 9:20 17:19,20 41:4 119:4 129:13 129:24 130:20 133:9,13 134:8 253:22 310:20 319:10 320:3,4,5 321:7 326:13,15 328:17 secures (1) 200:5 securing (1) 200:7 securities (32) 42:13,14 44:25 91:2,6 91:7 97:20,22 134:7 165:15 220:17 233:12 236:13,22
--	--	---	--	--

Contains Highly Confidential Portions

Page 31

237:9,25 238:13,22 249:19 253:17 255:8,17 258:12 259:13,16 274:12 288:8,21,24 291:10 302:10 342:23 security (7) 134:9 154:7,22 165:20 279:11 306:21 319:11 SEC's (1) 10:10 see (96) 32:23 37:13,18 38:12 43:7,22 46:2 47:16 47:20 49:14 51:7,10 52:7 53:13 59:3 61:11 71:20,22 72:9 72:15 78:3 83:14 84:9,11,15,21,23,24 100:4 101:23 103:12,18,21 104:8 107:8 108:18 114:6 118:14 121:22 123:2 128:10 141:10,14,21,23 142:2 143:3,7 146:17 147:15 148:2,13 150:22 151:5 164:19 168:18,24 173:10 177:22 178:3 179:4 179:13 192:10 200:18 201:19,21 201:23 203:6,14,22 203:25 217:16 220:20 221:7 223:20 224:25 225:24 226:2 228:22 229:4 232:25 235:20 236:4,17 237:23 238:3 245:11 281:14 286:13 306:3 308:20 314:12 316:18 333:19 334:20 336:5 seeing (2) 206:23 275:6 seeking (2) 236:11 237:24 seen (43) 31:22 36:4 53:17	61:12 67:9 70:16,17 71:10,11,11 74:21 74:24,25 77:4 83:6 117:22 146:16,19 146:21 148:7 178:20 183:18 206:22 207:7 212:5 221:25 222:3,5 238:19 239:18,21 264:14,15 266:14 266:16 285:25 289:23 290:2,6 297:6 330:24 334:19 338:3 seg (8) 8:25 10:17 17:19,20 129:24 133:13 253:22 295:18 segregated (2) 9:20 130:20 segregation (1) 10:18 seize (1) 283:22 seized (13) 280:24 281:10,19,20 282:16 284:10 289:16 290:9 291:21 295:11,21 295:22 302:16 seizure (5) 282:11 283:8 284:6 290:18 328:20 select (1) 34:11 selected (1) 33:15 sell (14) 98:25,25 99:2 105:25 106:2,7,7,8 109:11 113:15 116:19 311:8,13 328:10 seller (25) 109:6,8 112:10 113:15 114:4 115:4 143:9 171:12,15 172:6 177:20 196:5 196:12,16 197:2,10 197:21 198:15 201:17 203:11 207:23 211:6,12,14 218:17 seller's (1) 213:7	selling (16) 25:17 79:5 106:4,6 109:7 115:5,7 162:9 169:11,22 173:22 198:23 201:11 219:2 315:9 316:25 sells (1) 172:20 send (1) 289:12 sending (2) 236:24 296:19 sense (11) 13:18 14:16,17 17:4 30:5 108:9 110:3 128:25 129:3 175:13 257:8 sent (3) 10:17 235:20 287:10 sentence (19) 37:15 91:24 92:4,9 122:21 126:7,12 128:4 140:9 147:20 197:13 230:16 232:20 235:11 236:10 241:25 242:5 264:21 265:8 sentences (2) 121:13 122:12 separate (4) 20:17 24:11 120:23 306:6 separately (3) 14:14 81:12 165:16 September (79) 29:23 35:23 39:12,21 49:11 58:5,12,14,16 59:20 61:3 77:13 80:7 84:2,2,11,12 84:20,20 88:22 89:11 90:8,23 101:4 104:12 106:14 136:23 137:2,5 138:13 140:18 143:5,11,14,14 144:11 153:7 160:10 162:15 168:22 178:17 180:9 182:2 188:18 196:20 202:23 206:9 211:25 212:16,24 213:19 218:5 220:5,14 222:8 224:15 234:6	235:19 260:19 265:11,12,14,20 266:3,9,14,17,19 281:22 288:4,9,25 292:16 294:10 300:17 302:16 309:12,20 322:4 series (3) 243:7 254:18 255:2 serve (1) 251:3 served (1) 256:8 services (5) 251:15,22 252:11 277:22 278:11 SESSION (1) 146:2 set (14) 25:9 53:6,10 69:24 81:21 97:12 98:6 133:18 149:13 195:18 248:2 297:19 341:10,24 sets (2) 172:21 231:7 setting (1) 36:25 settle (4) 87:14,20 90:21 91:4 settled (5) 45:7 88:3,9 91:2 186:14 settlement (16) 44:7,11 49:9,10 57:24 58:2,21 61:17 88:7 117:25 118:11,16 118:24 120:2,7 173:5 settlements (1) 88:5 settling (3) 44:16,21 93:25 severe (2) 29:14 95:18 shape (1) 325:14 share (1) 55:16 sheet (2) 37:11,25 shell (1) 70:4 shifting (1)	140:17 shoes (7) 99:17,18 100:20,24 101:19,20 215:21 shoot (1) 73:10 shopping (1) 93:19 short (36) 32:14,14,14 38:5,24 39:2,5,15,18,20 40:2 42:17 44:23 82:21 88:22 89:6,10 90:21 97:15 108:12 110:9 115:8 116:3 118:6 151:2,20 152:2,2,3 157:22 160:5,19 161:12 178:25 182:14 298:24 shortest (3) 67:8 68:6,18 shortfall (4) 271:17,19 272:9 296:13 shortly (1) 220:15 shorts (1) 144:3 show (15) 6:23 47:3 53:18 260:25 267:15 273:7 281:7,8 291:3 305:15 308:13 311:15 319:3 320:2 328:5 showed (12) 88:16 94:23 107:3,4 140:25 141:2 165:6 192:22 271:17 282:19 285:25 305:13 showing (15) 42:23 47:10 70:8 77:6 83:4 120:25 127:5 146:12 172:14 200:14 219:5 224:5 234:24 281:16,18 shown (8) 275:15,15 321:24 322:24 331:3 334:14,14 336:6 shows (3) 83:14,25 249:18
--	---	--	--	--

Contains Highly Confidential Portions

Page 32

<p>shut (6) 281:25 282:5,10 288:10 289:4,9</p> <p>shutting (1) 282:6</p> <p>side (13) 38:5 39:3 49:4,5 97:14,15 105:13,14 292:15 293:4,8,10 293:24</p> <p>sides (5) 49:18 50:5,11 149:8 161:14</p> <p>Sidley (4) 71:23 73:5 235:12,14</p> <p>Sidley's (1) 235:17</p> <p>SIFMA (3) 255:7,13 256:4</p> <p>sign (2) 87:19 313:25</p> <p>signed (22) 39:11 42:10 69:23 70:5 220:14,24 221:10 237:22 253:18 313:21,23 314:8 315:21 322:4 322:6,22,23 323:2 323:10 324:5 325:18,19</p> <p>significant (10) 15:11 25:22 38:20 77:22 88:17 96:7,11 208:22 209:4 237:3</p> <p>significantly (1) 208:14</p> <p>sign-off (1) 21:4</p> <p>similar (6) 10:9,12 189:13 204:5 241:24 301:24</p> <p>simple (1) 163:17</p> <p>simply (1) 221:21</p> <p>single (4) 84:17 85:2 152:25 188:19</p> <p>SIPA (2) 4:12 242:11</p> <p>SIPC (24) 54:25 55:3,4,10,11,14 56:8,13 61:22 78:22 79:19,20 81:4 103:6</p>	<p>118:17 220:4 242:15 257:23 266:5,7,12 267:12 268:12 282:23</p> <p>sir (1) 301:8</p> <p>sitting (5) 86:14 144:4 248:3 280:21 335:14</p> <p>situation (3) 28:6 196:19 339:15</p> <p>situations (1) 218:9</p> <p>six (1) 77:16</p> <p>size (11) 17:5 86:25 88:15 95:6 97:7 98:6 132:9 134:13,14 162:14 216:7</p> <p>slight (1) 7:17</p> <p>slow (2) 14:21 65:3</p> <p>smaller (2) 18:23 258:20</p> <p>SMITH (1) 3:17</p> <p>smoothly (2) 6:6 276:12</p> <p>Society (2) 255:6,24</p> <p>sold (26) 100:13 183:15 197:7 210:22 310:22 312:7,18,22 313:19 314:11,12 315:10 315:25 316:20,21 316:22,24 318:2,2,4 318:11,12 319:16 323:24 325:11,17</p> <p>sole (1) 79:7</p> <p>solely (1) 247:7</p> <p>solvent (1) 79:15</p> <p>somebody (10) 18:3 166:4,17 187:6 213:3 228:8 254:10 308:13 310:23 314:9</p> <p>somebody's (1) 48:22</p>	<p>someplace (2) 231:19 234:3</p> <p>somewhat (2) 30:19 151:11</p> <p>soon (3) 6:18 103:20 104:14</p> <p>sooner (1) 103:21</p> <p>sorry (64) 12:16 14:25 19:3 45:17 49:23 52:6 56:17 65:3 69:19 70:3 89:22,24 92:23 103:9,15 109:15 119:17 122:9 125:19,20 127:15 127:17 130:24 131:3,12 132:4 139:25 140:24 150:16 159:5 177:24 178:2 184:22 194:3 195:7 200:20,21 202:21 203:4,4 216:24 238:8 241:9 243:16 244:6 254:22 264:25 265:4 266:18 272:16 273:4 276:9 279:21 282:22 286:9 287:7 297:14 304:13 307:12,16 309:25 314:15 318:21 327:2</p> <p>sort (4) 35:6 97:25 170:19 333:14</p> <p>source (10) 261:6,7 273:8 276:15 276:24 277:6 279:7 280:23 281:3 291:25</p> <p>SOUTHERN (1) 1:3</p> <p>space (1) 77:21</p> <p>speak (12) 64:24 65:9 275:22 277:9 278:17,20 298:4 308:2,4 329:16,21,24</p> <p>speaker (1) 101:25</p> <p>speaking (1)</p>	<p>222:7</p> <p>specialist (1) 5:9</p> <p>specific (13) 8:5 40:12 101:16 124:18 156:11 194:22,24 195:17 204:5 206:23 208:17 232:18 279:25</p> <p>specifically (8) 33:7 63:12 66:14 127:8 210:4 212:15 213:14 253:5</p> <p>specifics (2) 33:8 70:5</p> <p>speculate (1) 181:21</p> <p>speculation (1) 179:18</p> <p>speed (1) 283:24</p> <p>spend (1) 67:14</p> <p>spent (10) 18:18,22 19:7 59:14 63:24 64:4 68:14 95:15 243:3 257:6</p> <p>SPIC (1) 72:15</p> <p>spit (3) 162:18 164:16 165:5</p> <p>spoke (6) 7:16,21 65:14,16,19 276:7</p> <p>spot (1) 131:7</p> <p>ss (1) 341:3</p> <p>stable (1) 136:13</p> <p>staff (1) 253:7</p> <p>stamp (1) 282:24</p> <p>standpoint (9) 13:4 16:19,20 23:23 23:25 24:2,19 26:15 98:15</p> <p>start (25) 5:2 10:4 29:16 46:21 51:22 53:9 58:13 91:18 113:18 116:12 127:20</p>	<p>133:7 146:5 159:14 169:8,19 185:15 190:3 199:11 239:2 239:25 240:18 253:10 299:11 324:20</p> <p>started (10) 21:15 62:16 100:10 157:10 183:22 188:24 193:5 270:4 324:14,24</p> <p>starting (7) 77:19 87:10 178:22 198:6 220:11 333:25 337:3</p> <p>starts (3) 51:23 232:21 274:6</p> <p>state (11) 2:12 47:13 58:4 210:18 255:6,23 264:19,21 303:17 341:3,7</p> <p>stated (5) 196:11 211:12 237:7 274:11 315:6</p> <p>statement (22) 24:21 46:6 47:19 48:2 48:16 78:10 103:14 121:24 122:13 125:9 126:4 147:18 148:5 204:4 241:24 279:7 286:12 303:2 303:11 309:8 326:25 338:23</p> <p>statements (4) 21:14 102:23 262:3 299:16</p> <p>states (4) 1:2 33:9 239:22 313:18</p> <p>stating (6) 107:20 222:13 280:23 284:17 306:17 322:25</p> <p>stature (1) 271:9</p> <p>status (1) 29:10</p> <p>statutory (1) 242:12</p> <p>stay (1) 104:5</p> <p>stays (1) 313:18</p>
--	---	---	--	---

Contains Highly Confidential Portions

Page 33

STEEN (1) 3:20 step (4) 99:17,18 101:19,20 stepped (3) 100:20,24 102:6 Steve (1) 72:16 stipulated (3) 316:18 317:25 318:11 stipulation (7) 257:16 279:16,18 280:12 299:19 300:6,9 stock (3) 206:17 313:5 320:4 stocks (1) 201:12 stopped (1) 312:25 straight (1) 149:10 strategies (4) 20:23 27:9,11 151:8 strategy (1) 21:7 streams (1) 16:18 street (3) 3:7,13 144:24 strike (7) 67:7 85:10 225:17,20 283:20 306:8 323:14 structure (4) 132:25 217:21,22,24 structured (2) 210:24 218:7 structuring (2) 68:3 69:7 studies (1) 30:7 study (2) 41:12 255:14 stuff (1) 42:20 Subject (1) 306:15 submitted (4) 7:5 8:17 146:14,23 subordinated (3) 38:7 144:14 306:4 subordination (3) 42:11 305:23 306:3	subparagraphs (1) 204:12 Subscribed (1) 340:20 subsections (1) 232:19 Subsequent (2) 334:16 335:7 subsidiaries (1) 203:11 substance (1) 258:24 substantial (7) 136:2 184:10 185:4 185:18 207:9 211:17 212:15 substantially (2) 143:13 187:21 substantive (1) 242:4 substantively (1) 289:9 substitute (1) 247:13 substitution (1) 300:4 sub-bullet (1) 150:16 sufficiency (2) 172:19 173:25 sufficient (6) 36:18 55:20 82:14 99:25 104:17 170:16 suggest (3) 96:6 104:10 238:5 suggesting (4) 102:2 115:17 179:16 181:7 suggests (5) 48:4 72:24 148:8 174:13 175:11 summary (1) 300:14 Sunday (1) 324:18 supervised (3) 12:24 253:20 254:14 supplemental (5) 240:12 241:10 276:18 280:22 342:18 supplied (1) 262:18 supply (1)	329:13 support (7) 48:2 95:21 121:4 127:4 217:13 335:5 342:12 supporting (1) 336:7 supports (1) 328:15 supposed (4) 10:16 79:12 268:5 269:4 sure (91) 10:7 12:13,15 14:22 18:8 20:13 21:5,13 21:16 23:4 35:8 36:10 37:4 38:2 40:13,14,21 46:8 52:7 53:5 57:11 58:13 61:7 63:15 64:16 69:19,20,21 71:9 74:20 76:20 79:3 80:10 85:16 89:2,3,5 92:2 99:4 100:13 105:24 106:19 108:12 110:10 114:17 118:10 120:18,21 125:10 131:9 151:11,18,19 160:12 165:4 169:15 170:18,21 176:22 181:13 182:11 184:16,21 190:15 192:9,19 193:16 195:6 202:6 204:17 206:3 209:20 211:7,8 218:22,25 219:25 223:3 234:9 242:8 242:10 247:17 251:13 262:23 270:16 277:23,24 280:18 283:4 289:5 308:16 surmise (1) 74:14 surprise (3) 62:7,11,12 swear (1) 5:11 swing (1) 30:22 swings (1)	142:5 Swiss (1) 68:15 switched (1) 49:11 sworn (3) 5:15 340:20 341:11 system (27) 18:7,8 49:18 50:6 148:11 149:7,10 161:17 164:10,14 165:5,14,15 166:2 245:13,15,20 292:11 329:2,7,12 330:5 331:2,9,16,21 331:22 systems (22) 25:9,10 49:4 144:23 144:24 145:2 147:13,13,22 161:16 162:17 163:2,5,24 164:7 165:24 244:3,22,25 245:2,2,19 S.E.C (2) 264:10 296:9	158:25 162:11,16 166:21,22 167:8,21 169:7 183:21 184:2 187:11 189:14 191:6,25 192:8 197:24,25 199:5 216:2 217:5,10 235:5 241:23 254:22 257:21 298:24 305:7 335:10 338:5 taken (7) 180:2 188:21 222:11 249:10,11 282:3 295:14 talk (15) 64:18,21 73:19 126:22 157:13 173:21 176:4 190:20 191:13 192:16 231:16 291:24 304:2 311:18 315:9 talked (7) 50:2 120:5 167:15,16 195:3 247:19 309:8 talking (31) 45:19 63:14 64:7 92:11 94:6 113:23 123:21,22 128:24 135:7,8 140:8 157:5 182:3 183:5,5,6 190:14,16,17 192:3 220:13 223:18 226:14 231:17 269:15 285:19,21 294:25 300:8 328:17 talks (4) 284:21 319:8,16 326:13 tape (12) 5:3 46:22 91:15,19 145:9 146:6 199:8 199:12 240:6,19 299:8,12 Team (1) 147:23 telephone (2) 288:16,19 tell (18) 48:4 161:15 163:6,13 164:11 165:9 167:4 221:10 239:16
---	---	---	--	---

Contains Highly Confidential Portions

Page 34

250:17 258:6 267:21 273:7 276:6 290:16 304:16 312:13 327:25 telling (4) 104:21 236:21 305:16 321:9 ten (3) 66:19,20 67:3 tend (2) 136:9 152:9 Tennyson (1) 329:24 tens (7) 144:12 155:16 184:7 184:25 187:12,19 317:5 term (14) 23:2 43:16 65:8 176:25 200:17 201:18 203:16 204:10,22 205:4,11 205:21 206:3 226:24 terms (32) 15:12 20:16 24:5,22 33:3,5 55:9 56:21 62:4 63:25 64:16 69:7,7,22,24 74:6 78:23 79:21 93:25 117:9 129:20 137:23 139:6 147:23 148:25 151:14 158:15 200:2 204:5 218:17 233:17 238:10 testified (6) 5:16 16:2 67:7 82:12 100:12 146:4 testifying (1) 17:7 testimony (53) 8:12,22 12:10 17:25 42:9 50:16,24 51:20 72:18,22 82:17,25 85:7 87:3 100:6 102:2 115:22 123:19 130:22 162:22,24 163:21 164:6,6,9 175:15 178:11 179:16 195:23 210:7 215:6 219:10,13 220:11 221:7 222:2,6	243:12 261:7 263:6 268:2 271:5 272:18 301:11 302:9,15,25 308:18 312:4 324:19 325:23 341:12 342:3 Thank (10) 45:22 47:2 51:6 52:4 90:2 139:15 205:8 277:4 300:18 302:4 Thanks (5) 46:17 64:20 139:23 140:5 145:7 theirs (1) 314:10 theoretical (1) 30:23 theoretically (1) 313:22 thereof (1) 204:2 thereto (1) 248:15 therewith (1) 232:22 thing (8) 9:19 105:3 106:15 157:15 183:24 191:7 247:18 291:24 things (24) 6:14 26:7,9 93:16,21 94:10 95:12 100:25 122:20 123:8 131:4 131:13 134:17 154:23 194:6,10,19 197:5 218:23 247:5 277:14 283:23,24 299:5 think (180) 8:19 16:22 17:15,17 18:20 19:11 23:5 26:23 28:13 29:8 31:10,11 36:9 41:4 41:16 44:10 45:20 46:13 47:4 48:22 54:22 55:24 56:19 57:2,18 58:19 61:23 63:18 64:3 66:12,13 70:23 72:19 73:15 73:18 74:2 78:7 79:11,11 83:23 88:10 90:6 92:11,21 96:11,12 97:6,10,17	97:18,19 104:16 105:12 107:3 109:6 109:14,16 111:8,18 111:24 112:10,24 115:24 116:20 117:5 118:5,21 119:9,11 124:21 136:4,10 139:17 142:19 143:24 145:5 146:19 152:9 152:21 157:13 159:23 162:20 169:23 173:20,21 174:4,9,11,11,19,19 174:20,23 175:17 177:4,10 181:17 185:14 187:13,18 188:20 189:7,24 191:22 194:18 196:5 198:3 207:21 208:8,22 209:12,18 209:24 210:17 212:8,19 214:13 215:2 216:8,12 219:25 225:7,8 228:9 229:25 231:16,20,20 234:2 234:4 238:24 239:14,23 246:15 248:4,13 249:14 250:18 251:7,20 255:11 257:15,19 265:25 267:6 268:4 268:14 269:18 270:12,17 272:22 273:9,10,22 275:21 276:19 280:19 281:13 285:11 295:7 301:23 306:10 310:18,23 311:23 312:20 313:4,16,25 314:25 315:13 317:2 319:15 320:16,22 324:15 329:6 330:9 331:6 336:14 thinking (3) 67:19 179:20 254:25 third (1) 228:17 thought (47) 36:20 57:3,10 61:8 64:3 67:18,20 70:22 88:15 117:15,23	120:10 157:10 160:3,23 167:3 168:7,16 181:19 183:15 184:2 185:16 186:9 187:8 189:18 190:16 207:10 213:6,16 215:17,22 219:3 221:22 222:15 223:9 227:4 247:18 265:4 267:6 269:17 287:14 303:16 311:13 316:25 325:23 327:15 330:15 thoughts (1) 66:25 thousands (7) 144:12 155:16 184:7 184:25 187:12,19 317:6 threaten (1) 28:2 threatened (2) 106:12 193:15 threatening (4) 29:17 74:9 183:22 193:14 threats (1) 193:4 three (14) 20:6 93:9 97:7 99:10 247:7 248:3 250:5,6 252:14 255:12 256:24 260:10 262:3 280:21 time (227) 5:6 13:12 15:2,3,10 17:8,9 18:23,25 19:8 21:15 25:15 26:8,21 32:13 33:16 33:16 36:12 39:23 46:14,18,22 58:10 58:12,13 59:20,24 59:25 61:22 62:3,13 62:15,15 63:10,13 63:18 64:4,8,25 65:15 66:10,13,15 66:16 67:8,15,20 68:7,14,18 69:13 70:10,20 72:20 73:12,22,25 74:2 81:14 82:4 83:10 88:7 90:11 91:11,13	91:14,19 92:12,17 92:22 93:12,24 94:4 95:5,9,13,14 97:9 97:24 100:16 102:14 105:16,17 108:12,13 110:9,10 116:18 119:20 124:23 125:12 132:5,19,20 134:10 137:15,22 138:2,9 138:10 139:2,5,17 145:6,8 146:6 148:10,15,19 149:15,18 157:2 166:15 167:9 169:23,24 183:4 192:20 193:10 194:2,11,23,25 195:20 196:4,6,9,13 197:4 198:4,19 199:5,7,12,24 208:4 209:16,19 210:19 210:20,21 214:14 214:23,24 215:12 215:14 216:2 217:20 218:13 219:2 220:3,7 222:8 240:5,19 251:16,16 254:9,9 256:16 258:3,17 262:24 264:7,22 265:9 266:19 270:2,18 271:17 272:15 282:3,13,24 283:16 284:9 285:9 287:11 289:22 290:3,7,11 292:25 294:12,13 295:8 299:7,12 301:23 309:4,10 310:16 313:11,19 313:20,24 314:7,9 315:9 317:14 318:3 318:12,22,25 320:2 320:9,15,19 321:14 322:22 326:8 331:14 332:18 333:3,11,16,21 334:13,18,23 336:6 336:19 338:4,7,10 339:17 340:8 timeframe (2) 73:2 124:18 times (4) 10:18 139:10 218:15
--	---	--	--	---

Contains Highly Confidential Portions

Page 35

<p>218:23 timing (6) 63:15 64:5 92:10,18 92:25 93:6 title (1) 172:23 today (20) 5:5 7:14 65:13,14 70:15 71:3,7,7 104:2 146:18 197:13 208:7 250:3 257:18,20 304:9 309:7 315:6 321:25 333:5 today's (3) 83:8 104:4 340:9 told (11) 101:4 192:23 221:15 239:19 265:19 280:7 286:20 287:11 312:19 313:5 329:11 tomorrow (3) 134:21 208:8 257:18 ton (1) 136:19 tonight (1) 71:18 top (14) 71:11 85:20 91:24 92:4 97:7 129:13,15 129:17 130:2 150:17 159:12 164:16 224:20 334:4 topic (1) 6:18 topped (1) 131:8 total (10) 52:11 84:3,5 97:17 151:5 161:13 165:18 260:18 261:8 302:9 totally (1) 148:23 to-answer (1) 273:5 trade (1) 123:12 traded (4) 23:4 170:6,7 212:3 trader (3) 161:6 164:3,22</p>	<p>traders (3) 148:16 149:24 161:8 trades (8) 49:18 50:5 61:10,11 87:14 90:18 157:25 223:9 trading (27) 14:11 20:22 21:7,16 21:21 23:8 24:6,9 27:9,10 136:22 149:20 151:8 156:18 161:6 201:12,15,19,22,24 202:4,5,9,9,14,17 239:2 traditional (1) 111:8 traffic (1) 212:6 trail (2) 70:18 71:12 transaction (63) 13:6 15:18 16:11 17:6 25:5 39:25 40:22 41:14 62:5 64:22 66:18,22 67:15 68:19,23 69:3 71:17 72:6 92:6 93:3,25 98:19 102:15 103:5 103:25 104:2,11 105:10,18 106:13 117:10 125:13 129:21 130:17 132:25 137:16,24 138:12 139:8 142:11 153:7 154:8 154:20,21 160:9 161:3 166:16 168:11 169:3 178:16 183:17 208:19 210:4,19 215:14 216:4 217:11 218:7,19 220:8 236:2 238:11 318:7 transactions (13) 13:10,20 20:6,16 45:7 47:21 59:12 88:8 173:6 225:16 293:3 293:12,20 transcript (8) 51:8 77:15 99:6 104:20 217:6,10 219:21 341:20</p>	<p>transcription (1) 344:7 transfer (70) 42:6 43:2,24 80:20 81:22 82:2,22 87:9 107:25 109:22 110:21 111:13 114:23 115:18 119:3,10,12,14,24 120:22 121:15,18 122:14,22 123:14 124:2 126:8,23 133:11 134:6 140:10 142:7 171:10 173:23 174:14 175:24 183:19 189:20 190:8,9,24 191:20 194:7 196:19 198:12,16 207:15 207:17 208:9 222:14 224:18 233:13 237:21 238:25 278:11 309:3 310:3,8,13,13 310:16 317:5,7 318:16 320:6 323:2 323:6,10,11 328:21 transferred (26) 62:2 79:15 80:25 108:7 110:2 126:19 165:12 175:12,19 175:21 176:7 217:14 221:13,14 228:21 232:23 233:11 236:15 237:14 238:2 239:5 239:10,15 309:24 317:15 320:10 transferring (11) 80:13,16 127:2,24 134:3 175:7 177:6 190:2 222:14 223:9 231:13 transfers (2) 79:18 172:21 transpiring (4) 179:12 181:2 183:13 201:9 Treasury (3) 206:14,14,15 treatment (1) 52:2 Tricia (2)</p>	<p>3:15 5:22 trickles (1) 96:5 tried (3) 184:8 185:2 330:9 triple-witching (2) 86:13 143:17 Trish (10) 12:6 14:22 45:21 52:4 91:9 111:5 124:19 139:16 199:3 230:14 Trish's (1) 226:17 trouble (1) 93:14 true (7) 132:24 238:5 297:17 329:22 333:16 334:25 341:12 true-up (1) 171:18 truly (1) 194:13 trustee (77) 4:12 7:18 55:10 65:18 72:13 79:8,20,25 80:20 100:10 107:21,24 109:18 109:21 110:12,17 110:20 111:9,12 114:23 115:18 119:2,14,24 121:14 123:13 124:7 142:5 144:16 173:13 192:23 194:21,24 195:5,17,19 196:19 219:11 220:4,14,23 222:7 236:7 238:14 238:20 246:2 250:14,21 251:4,15 251:22 252:8,12 256:17 272:25 275:24 277:10,12 277:20 278:4,15 281:2 293:2,7,15,22 293:25 294:4,8,19 296:23 304:24 306:5 332:17 334:16 335:2,8 trustees (3) 7:17 79:13 242:16 trustee's (13) 8:12 78:22 81:4 121:3</p>	<p>140:2,9 196:2 206:19 262:5 275:11 329:18 332:16 342:11 try (9) 6:6,9,17,22 113:11 138:25 156:25 158:5 179:19 trying (13) 106:8 148:14 149:22 150:11 193:18 208:9 213:8 270:16 277:5 279:6 315:18 327:15,16 TSA (5) 277:16 278:7,9 296:23 297:25 TSG (2) 5:7,10 Tuesday (8) 271:23 272:5,23 273:14 290:14 339:10,12,17 turn (37) 32:19 37:9 45:13 50:24 71:13 77:18 83:13 91:22 99:8 103:2 108:14 113:17 118:6,9 120:25 121:12 139:24,25 147:6 150:15,24 178:10 200:15 203:3,5 217:7,8 220:10 241:14 248:16 274:3 296:14 299:23 300:20 306:11 308:21 313:9 turned (2) 148:15 283:19 Turning (1) 204:8 turns (1) 331:9 twice (1) 202:11 two (32) 25:5,8 49:3,4 84:19 86:6 105:22 113:23 121:13,25 122:12 127:12,15 131:4,13 161:14 175:5 202:6 202:8 222:12</p>
--	--	---	--	---

Contains Highly Confidential Portions

Page 36

<p>227:15 230:21 231:7 243:5 251:7 256:19 257:7 260:17 280:22 292:6,17 299:4 two-day (1) 30:22 type (9) 19:16 21:6 25:5 138:12 160:9 161:3 171:15 258:21 271:8 types (4) 23:19 24:13 138:21 161:2 typical (3) 95:5 170:13 218:17 typically (1) 154:17</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>UBS (20) 12:4,17 15:24 17:9 19:20 20:24 27:6 68:15 249:19,20,21 249:25 250:10 253:11,12,16 254:4 258:8,12,15 Uh-huh (41) 5:25 11:3 13:2 16:3 32:24 42:4 51:25 59:18 63:22 71:16 71:24 72:11 80:17 86:20 99:7 101:22 103:17 106:21 108:20 114:7 122:2 129:2 141:16 178:4 201:21 203:9 207:3 220:9 226:15 236:3 242:2 256:20 284:2 285:22 296:6 326:3 328:22 330:7 332:11 334:8 336:25 ultimately (1) 96:20 unambiguous (1) 233:17 uncollectable (1) 53:5 Undelivered (1) 121:10 underlying (5) 149:2 150:7 277:5</p>	<p>336:12,13 underneath (1) 277:6 understand (54) 6:20 21:2 29:8 40:9 44:6 48:24 49:25 62:23,25 64:5 66:12 74:3 87:14 95:17 97:3 115:13 125:11 127:24 128:12 131:14 154:12 157:24 170:19 174:16 176:17,24 178:23 179:15 181:6 182:13 188:4 188:23 193:17,18 194:14 203:17 204:22 205:3 206:19 214:11 222:23 235:21,24 244:9 278:14 279:6 281:10 293:18 294:23 307:15 315:18,19 322:21 328:23 understandable (1) 209:13 understanding (71) 23:9,18,24 24:22,23 26:21 29:3 30:14 33:4,18 34:12 38:2 40:7,21,25 42:6,17 42:19 43:15 44:14 52:21,24 54:17,24 55:4,8,19 60:5,11 60:16,20,25 65:23 69:16 75:8 76:10,22 78:21 80:5 88:2 93:7 94:18 102:9 123:24 125:11 126:4 129:18 137:4 153:5 159:17,22 178:15 202:12 208:16 211:24 214:17 216:12,15 216:16 218:3 220:23 222:7 236:12 237:8,15,25 252:15,19 281:21 294:13 301:17 understands (1) 277:25 understood (1) 137:12</p>	<p>undertake (3) 151:9 302:12,19 undertaken (1) 39:3 Unfortunately (1) 111:21 unhedged (2) 153:11 155:14 unilaterally (1) 77:24 UNITED (1) 1:2 unredacted (1) 305:20 unsecured (1) 311:18 urgency (4) 72:25 105:9,12,19 URQUHART (1) 4:4 usage (1) 205:4 use (7) 23:16 43:19 85:23 135:17 152:10 208:4 259:15 usual (1) 61:9 usually (8) 17:21 25:22 42:15 54:21 70:4 135:15 176:3 286:12 U.S (1) 170:8</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v (2) 128:8,9 Vague (5) 23:12,22 61:6 68:11 337:17 vagueness (1) 65:7 valid (3) 120:10,11 318:6 valuable (2) 172:18 215:23 value (70) 15:15 23:25 33:12,19 33:23,24 34:2,3,4 38:9,20 41:19 79:4 79:7 81:13,17 84:5 94:19 97:3 108:16 109:7,9 112:9,9,10</p>	<p>112:18 113:3,4,12 114:12 115:6,9,11 116:2,7,9,11 117:6 117:9,15,18 120:13 120:15 134:23 135:2 149:14 161:19,22 163:3,6 208:11,11 210:9,12 211:18 212:16,17 212:22 213:4,6,6,20 213:24 214:3 215:19 217:3 237:3 275:17 279:11,12 valued (1) 112:11 values (1) 212:10 variation (1) 204:2 various (16) 20:19 27:9 61:24 76:14 151:7 155:10 157:24 161:7 164:2 168:20 207:12 212:8 214:18 247:3 258:9,10 vehicle (2) 176:10 323:10 venture (1) 23:15 verbal (2) 6:12 289:6 version (2) 305:2,21 versus (5) 97:22,22 214:24 291:17 295:23 viability (1) 138:4 viable (3) 94:11 136:10 332:19 vice-versa (1) 155:20 video (1) 5:8 VIDEOGRAPHER... 5:2 46:18,21 91:14,18 145:8 146:5 199:7 199:11 240:5,18 299:7,11 338:7,10 340:8 videotaped (3) 1:13 2:4 5:4 Vinella's (1)</p>	<p>303:23 violation (5) 339:16,18,20,24 340:2 vis-a-vis (1) 29:4 VIX (3) 23:2,3,10 volatile (5) 23:10 32:7,11 35:3 136:2 volatility (12) 21:16,21 23:7,8 30:16 31:13 34:16 35:9,16 35:18,21 134:15</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait (2) 45:17 89:22 walked (2) 73:11,25 want (43) 15:22 16:23 18:17 19:14 47:3 51:2 59:10 60:3 67:4,5 73:7 94:24 109:5,6 112:10 116:19 126:3 144:16,17 156:21 157:19 173:21 179:19 181:21 193:17 197:19 198:2,5,7 204:19,20 210:11 214:14,15 226:22 234:9 246:8 258:16 261:20 283:23 296:15 298:24 326:16 wanted (19) 18:16 19:12,13 21:16 51:5 59:16 62:17 73:19 75:25 115:10 160:2,2,21,22 198:18 211:8 229:23 299:5 300:19 wants (1) 237:20 warranty (2) 172:22 173:16 wasn't (20) 19:11 94:11 96:10 107:7 109:9 113:8 129:21 133:13</p>
--	--	---	---	--

Contains Highly Confidential Portions

Page 37

137:7 158:22 164:9 171:20 195:5 230:15 231:11 234:13 246:17 267:3 310:20 315:16 way (31) 10:22 20:9 46:14 50:2 56:19 86:8 88:12 93:13 105:24 111:8 129:24 159:22 174:21 189:19 190:23 217:21 221:5 227:16 252:12 255:14 258:22 269:23 283:2 287:4 292:23 308:9,19 318:17 325:14 331:11 341:16 Wednesday (2) 77:20 268:20 week (19) 59:14,20 61:2 63:25 76:7 80:7 86:6 100:19 140:18 142:2 143:5,11,19 159:15,20 179:10 179:23 180:9,14 weekend (17) 26:2 67:13,16,21,23 87:15,21,23,25 88:3 88:22 89:11 90:7,22 103:7 144:18 214:13 weekly (2) 243:5 271:10 weeks (5) 26:5 59:15 250:5,6 255:12 week's (1) 102:20 Weil (2) 235:21,22 Welcome (1) 46:25 Wells (3) 260:3,7,13 went (15) 21:3 63:5 84:13,21 111:19 134:19 141:9,13 177:3 195:25 216:8 269:19 279:3,3	301:15 weren't (15) 101:11 102:10 117:21 156:4 159:8 167:4,6 168:7 169:20 210:21 245:8 287:23 315:6 330:16 331:8 we'll (4) 58:13 120:18 271:2 302:18 we're (27) 6:19 45:18 46:19 47:4 63:14 91:16 145:9 146:7 190:16 192:3 193:11 199:9,13 205:6 210:5 216:10 216:11 226:16 240:7,20 257:16 258:23 267:16 299:9 327:16 338:11 340:10 we've (8) 52:3 91:9 167:15,16 232:21 270:17 295:15 306:10 whereof (1) 341:23 wherewithal (1) 161:24 willing (11) 58:24 94:2 108:23 112:3 113:7,15 183:21 215:24 218:16 222:14 225:19 wished (1) 162:9 withdraw (16) 28:16 35:24 36:7 124:12 126:13 142:23 263:14 288:3,8 289:10 309:3 314:16,20 315:14 316:7 317:23 withdrawal (6) 263:21 264:16,17 272:17 309:5 317:22 withdrawals (1) 263:17 withdrawing (1) 315:4	withdrawn (17) 30:13 44:14 121:20 122:24 124:4,7,14 124:22 125:4,15,20 125:24 126:9 309:19 316:10,14 320:25 witness (30) 5:12,15 14:25 89:24 119:17 130:24 131:3 184:22 247:5 251:4 256:9 273:3 273:19 277:4 299:22,25 300:4,10 300:14,22 301:3,6,9 301:14,21 322:19 341:9,13,23 344:4 witnesses (1) 64:11 witness's (9) 115:22 123:19 162:24 163:21 175:15 195:22 215:6 268:2 312:4 Witter (2) 254:8,11 woke (1) 170:21 Woodland (2) 295:10 298:17 Woodlands (1) 292:7 word (4) 203:13,22,25 204:13 words (8) 49:2 104:5 149:11 164:9 181:22,23 227:15 234:2 work (18) 12:21 65:18 243:20 249:7,20 250:2,3,16 250:21,23 253:4,6 254:9 278:3,7 288:17 295:5 296:23 worked (12) 9:3,8,8,12 10:25 12:19,20,23 26:22 95:25 254:2,12 working (5) 65:18 100:10 243:4 278:15,16 works (2) 33:4 129:25	world (2) 10:14 112:24 worldwide (4) 12:18 13:3 101:18 102:18 worst (2) 82:4 87:8 worth (7) 115:15 196:18 198:3 212:2 213:12 216:17,20 wouldn't (36) 14:17 15:10 23:15 50:11 56:21 62:11 154:25 155:8 158:21 160:4,6,18 160:20 164:7,10 179:19 187:9 189:8 194:20 214:4,7 217:21 218:18,24 221:4 230:18 231:12 283:15 310:20 313:7 315:17 316:11,12 320:11,20 333:17 wrap (1) 6:18 wrapped (1) 239:24 write (4) 53:7 54:18,21 214:24 writing (2) 127:22 228:5 written (8) 50:13 51:11 52:14 171:16 227:16 228:10,13 257:3 wrong (2) 177:3 287:12 wrote (4) 53:4 56:2,5 57:11 <hr/> X <hr/> x (2) 1:4,10 <hr/> Y <hr/> Yeah (3) 204:16 221:14 233:7 year (3) 15:17 113:3 285:10 years (7) 9:3,12 20:25 112:17 243:3,4 252:24	yellow (1) 51:3 Yesterday (1) 77:23 York (20) 1:3,14,14 2:7,7,12 3:8 3:8,14,23,23 4:8,8 4:14,14 255:6,23 341:3,4,7 <hr/> Z <hr/> zero (4) 33:17 82:5 198:5 281:18 <hr/> \$ <hr/> \$1,359,001,075 (1) 84:14 \$1,400,000,000 (1) 84:22 \$1.1 (2) 37:17,23 \$1.19 (1) 37:12 \$1.2 (2) 141:22 143:4 \$1.6 (5) 78:3,15 181:25 189:16,19 \$10 (1) 134:8 \$100 (7) 114:13,14 133:17,19 133:25 134:3 209:18 \$104 (2) 52:12 53:12 \$150 (2) 149:17 150:7 \$2 (7) 84:22,22 108:7,8 109:25 110:2 119:10 \$2.29 (2) 37:17,22 \$2.3 (1) 335:5 \$20 (1) 134:8 \$200 (1) 208:7 \$213 (1) 296:13 \$250 (1)
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Contains Highly Confidential Portions

Page 38

113:2 \$258 (1) 275:4 \$300 (1) 117:16 \$400 (1) 141:25 \$439 (1) 308:14 \$50 (1) 134:2 \$500 (6) 84:17 86:5 140:17 141:10 149:14 150:8 \$507 (2) 316:23 318:15 \$600 (2) 85:2 141:17 \$69 (1) 97:14 \$70 (1) 97:13 \$700 (1) 208:7 \$789,583,205 (1) 84:13 \$80 (1) 48:15 \$82 (1) 331:3 \$891 (1) 278:24	43:21 1.769 (1) 302:11 1:05 (1) 145:8 10 (12) 3:13 98:3 203:4,21 271:20,22 272:4 287:13 290:13 339:10,12,17 10:25 (1) 46:18 10:43 (1) 46:22 100 (1) 51:11 10004 (1) 4:14 10006 (1) 3:23 10010 (1) 4:8 10017 (1) 3:8 101 (1) 99:8 11 (4) 1:6 99:21 100:18 308:24 11:36 (1) 91:14 11:57 (1) 91:20 12 (3) 11:7 47:25 308:24 12th (1) 290:5 12-23 (1) 1:16 121 (1) 342:11 12207 (1) 3:14 13 (10) 16:23 49:7 264:19,25 265:2,3,5 274:6 309:8 333:25 136 (2) 121:13 122:12 139 (1) 51:22 14 (6) 16:23 32:19 47:25 48:8 220:12 343:6	140 (1) 52:7 141 (1) 50:24 15 (12) 20:25 52:8 59:20 61:3 80:7 84:2,12 140:18 143:6,11 180:9 343:4 15c3 (3) 9:11 259:18,23 15c3-3 (35) 243:13 244:9 255:15 255:25 258:3,25 259:8 262:25 264:13 267:16,18 267:20,21 268:5,11 268:25 269:8 271:24 284:4,13 290:25 291:11 298:10 311:16 312:12 317:8 319:4 326:11 328:5 329:2 331:10,17 339:21 342:21,23 15th (6) 141:8,20 193:5,12 195:3 209:22 16 (8) 39:12 47:25 84:12 211:25 212:16,24 213:19 295:9 16th (3) 141:9,13 193:3 17 (3) 84:20 128:9 308:25 17th (19) 141:12,13,18 267:5 289:18,25 309:24 310:2,7 311:4,5,8 311:25 312:23 314:17 315:5 316:8 316:19 320:25 178 (1) 342:13 18 (8) 84:20 108:15 182:2 266:15 296:3 297:20 298:8 303:3 18th (6) 141:12,18,20 188:19 281:22,23 19 (30) 35:23 77:13 84:3	136:23 137:2,5 206:9 220:5,14 222:8 224:15 234:6 260:19 265:11,12 265:14,20 266:17 288:4,9,25 292:16 302:17 306:13 309:12,20 322:5 334:4,4 337:2 19th (56) 85:18,23 86:13,19,23 87:2 90:10 101:4 141:3 144:10 192:25 209:17 266:3,9,19,21 267:8 267:14,23 268:6 271:2 272:7 282:20 283:6,10 284:10 285:5,13 286:17 289:16 290:9,19 294:10 295:24,25 300:17 310:23,25 312:7,8 313:22 314:19,20 316:25 318:9 321:8 322:13 322:23 323:19 324:10,15 325:4,21 325:25 328:4,9 190.06(e)(1)(iv) (2) 128:8,9 1998 (1) 258:9	324:5 200 (1) 257:14 2000 (2) 218:4 258:13 2003 (2) 15:22 258:17 2004 (2) 15:19,22 2005 (2) 13:8 15:19 2006 (3) 13:7 15:25 19:21 2008 (40) 17:11 29:23 35:23 39:21 49:11 58:5 59:21 63:7 77:13 84:3,20,20 104:12 137:5 138:14 143:11 153:7 160:10 162:15 178:17 196:20 202:23 206:9 211:25 212:24 213:19 218:5 222:9 224:15 234:6 260:19 265:11,12 265:14,20 266:3 288:25 292:16 302:17 309:12 2009 (2) 249:22 303:9 2010 (7) 1:15 2:2 5:6 297:5 340:21 341:24 344:3 21 (2) 45:21 306:13 21st (5) 88:22 89:12 90:8,23 325:18 219 (1) 342:14 22 (10) 11:7 51:23 89:11 104:12 113:19 143:14 150:25 168:22 202:23 330:3 22nd (12) 4:7 39:21 74:10 85:20 87:20 88:18,19 106:13 322:8 323:3 324:5 325:19
<hr/> 0 <hr/> 074C (3) 48:12 53:14 60:22 074F (2) 44:17 60:18 074M (1) 44:17 08-13555(JMP) (1) 1:7				
<hr/> 1 <hr/> 1 (14) 5:3 29:9 83:13,14,25 119:13 139:18 141:6,7 200:14 270:9 299:24 300:3 344:6 1(a) (1) 172:17 1(b) (1)				

Contains Highly Confidential Portions

Page 39

<p>222 (1) 3:7 23 (6) 49:11 113:17 143:14 177:19,25 330:3 235 (1) 342:15 24 (5) 62:8 69:4,4 77:21 308:23 240 (3) 342:17,18,20 241 (1) 342:5 25 (3) 197:25 224:6 308:23 257 (1) 343:4 258 (1) 275:7 26 (2) 45:13,14 2625 (2) 291:13,16 267 (1) 342:21 27 (4) 45:13 241:11 243:7 254:18 273 (1) 43:10 275 (3) 178:10,22 180:3 28 (3) 300:25 301:7 302:23 281 (1) 275:4 282 (1) 220:10 29 (2) 37:9 258:9 291 (1) 342:22 29428 (1) 1:25 297 (1) 342:24</p> <hr/> <p>3</p> <p>3 (13) 28:13,14 29:12 71:15 91:19 94:24 95:3 106:23 145:9 150:16,16 178:23</p>	<p>344:7 3-3 (15) 100:11 243:6 248:5 248:14 258:19 269:11 311:17 319:8,14,15,21,24 326:13 328:8 329:7 3:03 (1) 199:7 3:19 (1) 199:13 30 (3) 28:12 29:13 243:3 30(e) (1) 341:21 300 (2) 38:4,9 300-and-some-page... 222:12 302 (2) 343:5,6 305 (1) 343:7 35 (1) 274:25 39 (1) 306:14</p> <hr/> <p>4</p> <p>4 (8) 29:14 41:5 146:6 150:16 199:9 203:3 228:17 240:7 4:13 (1) 240:5 4:45 (1) 240:19 40 (2) 117:12 306:14 41st (1) 3:7 439 (2) 306:18 308:11 44 (2) 113:20 333:19 442 (3) 77:7 99:5 217:7 45 (3) 41:2 141:14 308:25 46 (1) 328:19 47 (2) 329:4 342:9 48 (2)</p>	<p>214:8 215:17 49 (1) 328:19</p> <hr/> <p>5</p> <p>5 (16) 41:5 94:24 95:3 199:12 241:14 257:9 297:4,11,14 333:12,24 336:20 337:6 342:4 343:5,7 5:54 (1) 299:7 50 (4) 29:15 41:3 197:24 342:10 500 (1) 315:12 51 (7) 4:6 42:24 45:23 47:12 172:15,16 337:3 54 (1) 113:20 55 (2) 113:20 114:3 575 (1) 2:6</p> <hr/> <p>6</p> <p>6 (15) 1:15 2:2 5:6 83:23,24 108:14 147:7 203:4 203:5 204:8 240:19 265:3 299:9 342:8 344:3 6:23 (1) 299:12 60 (5) 121:12 140:6,7 217:8 217:9 60(B) (1) 121:7 601(c) (1) 32:23 61 (2) 77:18,19 630 (4) 70:9 106:20 275:3,7 648 (1) 146:13 659A (1) 127:6 66 (1) 45:14</p>	<p>676A (1) 83:5 684 (4) 6:24,25 7:4 342:8 685 (4) 47:6,7,11 342:9 686 (3) 50:19,20 342:10 687 (5) 121:2,3 140:3,4 342:11 688 (3) 178:6,7 342:13 689 (3) 219:6,7 342:14 69 (4) 39:17,20 97:18 241:6 690 (3) 234:25 235:2 342:15 691 (7) 240:9 241:2,5,13 242:6 300:21 342:17 692 (4) 240:12 241:3,10 342:18 693 (6) 240:15 241:3,12 242:6 300:23 342:20 694 (3) 267:17,18 342:21 695 (3) 291:8,9 342:22 696 (3) 297:3,7 342:24</p> <hr/> <p>7</p> <p>7 (7) 52:8 91:23 98:20 150:24 297:11,14 299:12 7th (1) 341:24 7:09 (1) 338:7 7:19 (1) 338:10 7:20 (1) 340:8 70 (5) 37:10 39:17 42:3 43:18 97:18 73 (3)</p>	<p>103:2,11,12 74 (1) 43:10</p> <hr/> <p>8</p> <p>8 (5) 159:12 228:17 232:14 232:18 296:14 82 (1) 328:25 84 (1) 43:10 891 (1) 274:23</p> <hr/> <p>9</p> <p>9 (4) 32:20,22 249:23 270:10 9/15/2008 (1) 83:15 9/19 (10) 294:3,7 295:4,6 298:11 302:10 304:20 318:16 336:2,10 9/19/2008 (1) 83:16 9:37 (1) 5:6 922 (2) 235:3 342:16 944 (3) 298:15,16,20</p>
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EXHIBIT C

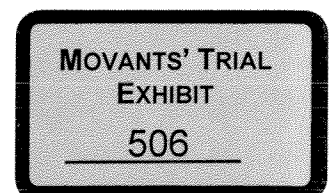
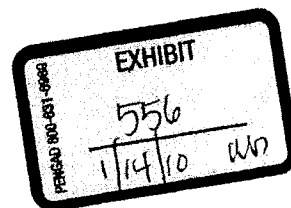
From: Hodge, Alasdair: CFG Mgmt (LDN)
Sent: Tue, 16 Sep 2008 07:42:52 GMT
Machell, Carole: Operations (LDN); Chapman, Paul: Operations (LDN);
To: Freeborn, Philip: IT (LDN); Schwarz, Christoph: IT (LDN); Garcha,
Sarvjeet: Treasury (LDN); Sterling, Harriet: Treasury (LDN); Morse,
Stephen: Compliance (LDN); Whitehouse, Sharon: HR (LDN)
CC: Logozzo, Joseph: Markets (NYK); Stack, Tim: Futures (NYK)
Subject: URGENT-TIME SENSITIVE: Lehman Futures Business

Importance: High

As you may have heard, we are evaluating the potential acquisition of the Lehman Futures business. We need to quickly assess and make a decision later today. Attached is a document including situation overview, benefits, risks, key transaction requirements and key next steps. Please review and reply with your thoughts and your area's relevant assessment as soon as possible.

Please work with Joe Logozzo & Tim Stack if you have any questions / concerns.

AI



BRIEFING MEMO - Page 1
September 15, 2008

To: Alasdair Hodge
From: Tim Stack
Subject: Potential Acquisition of Lehman Brothers' ("LB" or "Lehman") Futures Business
Date: Monday, September 15, 2008

OBJECTIVE:

Evaluate the possibility of acquiring Lehman Brothers' futures business in a very timely fashion with little impact to their clients. LB has indicated that the desired transaction is to happen **by Tuesday afternoon** in order to retain their most valuable clients. In order to achieve this result Barclays would have to follow a two-step transaction: 1) assume LB's clearing clients and guarantee their obligations under current documentation, including temporarily taking on Lehman staff and technology services, and 2) novating the clients to Barclays and permanently integrating them under Barclays' umbrella.

SITUATION OVERVIEW:

On Friday September 12th, the Chicago Mercantile Exchange ("CME") approached Tim Stack at Barclays Capital regarding potentially taking over LB's proprietary and client futures positions. On Sunday night Lehman Brothers approached Barclays about the possibility of transferring all its customer futures accounts (segregated and secured) to Barclays. Jeff Jennings, the Head of LB's Global Futures Business, contacted Tim Stack via the CME to initiate the conversations. We have had follow-up meetings with Lehman's business and operations staff today. Barclays' team included representatives of Compliance, Operations, Futures business as well as external legal counsel from Sullivan & Cromwell ("S&C").

Lehman Brothers' Futures Business Overview: Lehman's futures business consists of ~100 institutional clients and total global futures revenues of approximately \$250 million. Current client deposits are ~\$4.6 billion in segregated funds and ~\$1.8 bln in secured funds. These fund balances are 32% lower than the balances at the end of July where segregated funds totalled \$6.4 billion and secured funds totalled \$3.2 billion. We are awaiting their current net capital requirement, but expect it to be lower than their July month end requirement \$424 million (8% x maintenance margin of \$5.3 billion). Lehman's client base is skewed toward real money asset managers. Lehman Futures operates under two legal entities: LBI is the U.S. based FCM and accounts for 80% of their business; LBIE is their European based FCM which accounts for the balance. Lehman does have other legal entities on some of the Asian exchanges with omnibus accounts for the two primary legal entities.

TRANSACTION BENEFITS AND RISKS:

Benefits to Barclays: Taking over the LB business will allow Barcap to double its business by adding annual revenues of ~\$250 million. The addition of the LB client base provides a greater diversification to Barcap's current client base into real money asset managers, which is a priority for Barclays. The business is also complementary to our market position as Lehman is strongest in the U.S. while Barclays is strongest in Europe.

Barclays' Positioning: The Barclays team was given indication by the LB team that at this stage Barclays is looking at the business on an exclusive basis. Given the turmoil in the financial industry and recent events surrounding B of A's take over of Merrill Lynch, we believe that the only other potential competitor for the business could be Goldman Sachs should we fail to reach an agreement on a transaction.

Key Risk: Loss of key clients due to inability to execute an expedient transaction

BRIEFING MEMO - Page 2
September 15, 2008

KEY TRANSACTION REQUIREMENTS AND NEXT STEPS:

- 1) Legal Framework to Facilitate Transaction within LB's Chapter 11 Filing:
 - Given LB's Chapter 11 filing last night, Barclays must obtain an explicit protective order from the Bankruptcy Judge in order to have assurances against potential subsequent legal proceedings and avoid preference issues. Legal documents must be put in place and approved by bankruptcy court in order for Barclays to have temporary reliable access to the required technology services. These services include futures trading technology (Pats and Tradepipe), futures clearing systems (R&N and Clearvision), post-trade web portal and customized allocation, reporting and allocation solutions. We have engaged S&C as legal adviser and they are currently drafting the legal documentation for the potential approach to the court. It will be a challenge to have this in place by tomorrow afternoon.
- 2) Additional Capital Requirements:
 - Taking on \$6.4 billion of client deposits is expected to require Barclays to increase net capital by approximately \$300 million. This estimate is based on a previous requirement of \$424 million on total client deposits of \$9.6 billion. Since deposits have decreased 32%, we expect similar decrease in capital requirements (Barclays has asked Lehman for more detail on their current capital requirement). We require senior management approval related to such capital increase.
- 3) Cost and Temporary Access to Lehman Staff:
 - To effect step 1 of the potential transaction, Barclays would need to temporarily take on key Lehman front office, operations and IT staff and systems. LB indicated to us that total front office staff is comprised of 67 employees, including 16 sales-trading staff. Total client service staff is comprised of 34 people. Total clearing operations staff is 80 people. Total staff estimate is 181 people. We have to coordinate with Barclays Human Resources on putting in place an interim employee plan. [do we have enough info and want to talk about the potential Transition Services Agreement here?]
- 4) Key Transaction Setup Areas:
 - Barclays KYC, Credit and Compliance must approve all new clearing relationships. Frank Principe (KYC) and Doug Freedman (Compliance) are spearheading the effort and have agreed that only KYC Lite (sanction checks, OFAC, negative news) process will be followed for new Lehman clients. Compliance and KYC agreed they are comfortable with this as Lehman is a registered and regulated broker dealer. Credit will be involved in approving new accounts, but does not expect this to be an issue for a sizable majority of the accounts given their composition.

EXHIBIT D

From: Raisler, Kenneth
Sent: Tue, 16 Sep 2008 18:49:21 GMT
To: Stack, Tim; Futures (NYK)
Subject: FW: Lehman House Portfolio

Redacted - Privileged

-----Original Message-----

From: Farabi, Corey [mailto:Corey.Farabi@cmegroup.com]
Sent: Tuesday, September 16, 2008 11:44 AM
To: Raisler, Kenneth
Cc: Michaels, Dale; Patel, Ketan
Subject: Lehman House Portfolio

Ken,

Attached to this email is a zipped file that contains 6 other files. Three relate to the CME/CBT portfolio and three relate to the Nymex portfolio.

The three types of files are as follows:

Margin Requirement by Combined Commodity
Period Deltas by Combined Commodity
Full Positions Report

Feel free to reply to this email or give me a call if you have any questions.

Thanks,

Corey Farabi
Risk Management Analyst
CME Clearing

T 312 466 4408
corey.farabi@cmegroup.com

CME Group
A CME/Chicago Board of Trade Company
20 South Wacker Drive
Chicago, Illinois 60606
www.cmegroup.com

MOVANTS' TRIAL
EXHIBIT
520

PC-SPAN®

PB Requirements

XML File: C:\Lehman\9-15 House Span.spn
Business Date: 2008-09-15 settlement final

Firm: 835 Acct: 835 Type:N Seg:HOUS

Currency:	USD		Core Maint	Core Init
Ledger Balance:	\$0.00	Span Req	\$818,899,814.70	\$818,899,814.70
Open Trade Equity:	\$0.00	- ANOV	(\$17,263,379.97)	(\$17,263,379.97)
Securities:	\$0.00	Total Req:	\$836,163,194.67	\$836,163,194.67
Total Equity:	\$0.00	Net Liq Value:	(\$17,263,379.97)	(\$17,263,379.97)
		Excess/Deficit:	(\$818,899,814.70	(\$818,899,814.70)

Level	EC	CC	Curr	LOV	SOV	M/I	PBC	Span Req	ANOV	Scan Risk	Intra	Spot	Inter	Intex	SOM
port			USD	480,371,458.78	497,634,838.75										
curVal			CHF	0.00	0.00										
curVal			GBP	0.00	0.00										
curVal			JPY	0.00	0.00										
curVal			USD	480,371,458.78	497,634,838.75										
oReq						MNT	CORE	818,899,814.70							
curReq			CHF					300.00	0.00						
curReq			GBP					16,500.00	0.00						
curReq			JPY					677,860,000.00	0.00						
curReq			USD					812,404,427.00	17,263,379.97						
oReq						INIT	CORE	818,899,814.70							
curReq			CHF					300.00	0.00						
curReq			GBP					16,500.00	0.00						
curReq			JPY					677,860,000.00	0.00						
curReq			USD					812,404,427.00	17,263,379.97						
ecPort	CME			480,371,458.78	497,634,838.75										
curVal			CHF	0.00	0.00										
curVal			GBP	0.00	0.00										
curVal			JPY	0.00	0.00										
curVal			USD	480,371,458.78	497,634,838.75										
oReq						MNT	CORE	818,899,814.70							
curReq			CHF					300.00	0.00						
curReq			GBP					16,500.00	0.00						
curReq			JPY					677,860,000.00	0.00						

9/16/2008 8:50:22 AM

PbReq

Page 1 of 4

curReq			USD					812,404,427.00	17,263,379.97						
oReq						INIT	CORE	818,899,814.70							
curReq			CHF					300.00	0.00						
curReq			GBP					16,500.00	0.00						
curReq			JPY					677,860,000.00	0.00						
curReq			USD					812,404,427.00	17,263,379.97						
ccPort		06	USD	0.00	0.00										
dReq						INIT	CORE	446,000.00	0.00						
ccPort		07	USD	0.00	0.00										
dReq						INIT	CORE	2,629,400.00	0.00						
ccPort		11	USD	0.00	0.00										
dReq						INIT	CORE	27,014,082.00	0.00						
ccPort		14	USD	0.00	0.00										
dReq						INIT	CORE	33,000.00	0.00						
ccPort		17	USD	0.00	0.00										
ccPort		21	USD	42,097,784.25	104,110,438.50										
dReq						INIT	CORE	10,987,057.00	62,012,654.25						
ccPort		25	USD	0.00	0.00										
ccPort		26	USD	0.00	0.00										
ccPort		41	USD	17,880,994.28	8,902,745.00										
dReq						INIT	CORE	3,225,587.00	8,978,249.28						
ccPort		66	USD	0.00	0.00										
dReq						INIT	CORE	94,095.00	0.00						
ccPort		71	USD	20,846,824.00	20,458,224.00										
dReq						INIT	CORE	2,681,110.00	388,600.00						
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ccPort		DA	USD	0.00	0.00										
dReq						INIT	CORE	362,000.00	0.00						

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Page 2 of 4

ccPort		EC	USD	4,535,625.00	0.00										
dReq						INIT	CORE	7,491,656.00	4,535,625.00						
ccPort		ED	USD	384,862,525.00	361,603,118.75										
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dReq						INIT	CORE	4,200.00	0.00						
ccPort		EM	USD	0.00	0.00										
dReq						INIT	CORE	4,500.00	0.00						
ccPort		EY	JPY	0.00	0.00										
dReq						INIT	CORE	5,000,000.00	0.00						
ccPort		FC	USD	0.00	0.00										
dReq						INIT	CORE	1,000,100.00	0.00						
ccPort		JY	USD	0.00	0.00										
dReq						INIT	CORE	6,006,800.00	0.00						
ccPort		LB	USD	0.00	0.00										
dReq						INIT	CORE	85,800.00	0.00						
ccPort		LBA	USD	0.00	0.00										
dReq						INIT	CORE	48,000.00	0.00						
ccPort		LC	USD	38,000.00	0.00										
dReq						INIT	CORE	4,992,600.00	38,000.00						
ccPort		LN	USD	0.00	0.00										
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ccPort		NK	USD	0.00	0.00										
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Page 3 of 4

ccPort		O	USD	0.00	0.00										
dReq						INIT	CORE	8,000.00	0.00						
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dReq						INIT	CORE	511,595.00	0.00						
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dReq						INIT	CORE	12,116,383.00	1,273,062.50						

BCI-EX-(S)-00231523 TO BCI-EX-(S)-00232046

HAVE BEEN OMITTED DUE TO SIZE

EXHIBIT E

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 IN RE:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)

8 HOLDINGS, INC. et al.,

9 Debtors.

10 -----X

11
12 HIGHLY CONFIDENTIAL
13 DEPOSITION OF KENNETH RAISLER
14 New York, New York
15 March 1, 2010
16
17

18 Reported by:

Bonnie Pruszyński, RMR

19 JOB NO. 28462
20
21
22
23
24
25

Page 2	Page 3
<p>1 2 March 1, 2010 3 8:30 a.m. 4 5 6 Deposition of KENNETH RAISLER, Hughes 7 Hubbard & Reed, LLP, One Battery Park Plaza, 8 New York, New York, before Bonnie 9 Pruszyński, Registered Professional 10 Reporter, Registered Merit Reporter, 11 Certified LiveNote Reporter, and a Notary 12 Public of the State of New York. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 A P P E A R A N C E S: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017 7 BY: BRIDGET A. CRAWFORD, ESQ. 8 BOIES, SCHILLER & FLEXNER, LLP 9 Attorneys for Barclays 10 10 North Pearl Street, 4th Floor 11 Albany, New York 12207 12 BY: TRICIA J. BLOOMER, ESQ. 13 HUGHES HUBBARD & REED, LLP 14 Attorneys for SIPA Trustee 15 One Battery Park Plaza 16 New York, New York 10004 17 BY: NEIL J. OXFORD, ESQ. 18 QUINN EMMANUEL 19 Attorneys for the Creditors Committee 20 51 Madison Avenue 21 New York, New York 10010 22 BY: ERIC M. KAY, ESQ. 23 24 25</p>
Page 4	Page 5
<p>1 2 A P P E A R A N C E S (continued): 3 SULLIVAN & CROMWELL, LLP 4 Attorneys for the Witness 5 125 Broad Street 6 New York, New York 10004 7 BY: ROBINSON B. LACY, ESQ. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Confidential - K. Raisler 2 KENNETH RAISLER, 3 called as a witness, having been first 4 duly sworn, was examined and testified 5 as follows: 6 EXAMINATION 7 BY MR. OXFORD: 8 Q Good morning, Mr. Raisler. 9 A Good morning. 10 Q As you know, my name is Neil Oxford. 11 I'm with the law firm of Hughes Hubbard & Reed. 12 We represent the SIPA trustee in this matter. 13 I'm here to take your deposition 14 today particularly in connection with a 15 declaration you submitted in support of Barclays' 16 opposition papers. 17 (Exhibit 658A marked for 18 identification as of this date.) 19 Q You have in front of you what I have 20 marked as Exhibit 658-A, sir. 21 Do you recognize that document, sir? 22 A Yes, I do. 23 Q Is that in fact your declaration that 24 you submitted in support of Barclays' opposition 25 papers in this matter?</p>

Page 6	Page 7
<p>1 Confidential - K. Raisler</p> <p>2 A Yes, it is.</p> <p>3 Q In paragraph three of your</p> <p>4 declaration, Mr. Raisler, you describe very</p> <p>5 generally that you were involved in meetings and</p> <p>6 discussions between LBI and Barclays personnel</p> <p>7 concerning a potential acquisition by Barclays of</p> <p>8 LBI's proprietary futures business as well as its</p> <p>9 business as a futures commission merchant; is that</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q What I would like to do is drill down</p> <p>13 a little further into those generalities, sir.</p> <p>14 Sullivan & Cromwell was first engaged</p> <p>15 by Barclays in connection with this matter on</p> <p>16 September 15th; is that correct?</p> <p>17 A No, actually on the 14th.</p> <p>18 Q How was it that Sullivan & Cromwell</p> <p>19 first became engaged, sir?</p> <p>20 A I don't remember precisely, but I do</p> <p>21 recall we had -- I had some phone calls with, with</p> <p>22 representative of Barclays --</p> <p>23 MS. BLOOMER: I'm just going to</p> <p>24 object and instruct the witness not to</p> <p>25 reveal the substance of the communications.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A -- in the afternoon and evening of</p> <p>3 Sunday, September 14th. I believe that was the</p> <p>4 first time that we were involved. It certainly</p> <p>5 was the first time I was involved.</p> <p>6 Q Other than representatives of</p> <p>7 Barclay, Mr. Raisler, was anybody else on those</p> <p>8 telephone calls on Sunday, the 14th of September?</p> <p>9 A Other than representatives of</p> <p>10 Sullivan & Cromwell and Barclays, no.</p> <p>11 Q When was the first time, Mr. Raisler,</p> <p>12 that you were involved in a meeting between Lehman</p> <p>13 and Barclays personnel concerning the potential</p> <p>14 acquisition by Barclays of any part of Lehman's</p> <p>15 futures business? And I should broaden my</p> <p>16 question. Not just meetings. I'm inquiring about</p> <p>17 any conference calls as well.</p> <p>18 A The morning of September 15th.</p> <p>19 Q Can you tell me about that meeting,</p> <p>20 please, sir? Well, withdrawn.</p> <p>21 Was that a meeting or a conference</p> <p>22 call?</p> <p>23 A It was a meeting, and it was a</p> <p>24 meeting that lasted most of the day, to my best</p> <p>25 recollection.</p>
Page 8	Page 9
<p>1 Confidential - K. Raisler</p> <p>2 Q Where did it take place?</p> <p>3 A Again, this is only a recollection,</p> <p>4 but I think it was at Lehman's offices on 7th</p> <p>5 Avenue.</p> <p>6 Q Do you remember approximately when it</p> <p>7 started, sir?</p> <p>8 A I really don't recall. I have some</p> <p>9 vague recollection that we had a pre-meeting at</p> <p>10 Barclays before we went over to Lehman, but I am</p> <p>11 not sure that is right.</p> <p>12 Q To your recollection, sir, did the</p> <p>13 meeting with the Lehman folks start in the morning</p> <p>14 or the afternoon?</p> <p>15 A Definitely in the morning.</p> <p>16 Q And the meeting lasted, you said,</p> <p>17 most of the day. Approximately when do you think</p> <p>18 it finished?</p> <p>19 A The problem I have, and I should</p> <p>20 probably get this on the record early, the week is</p> <p>21 sort of a blur because there were meetings going</p> <p>22 on steadily the whole week, so, when meetings</p> <p>23 ended and when meetings started becomes sort of a</p> <p>24 disconnect for me.</p> <p>25 My best guess was late in the</p>	<p>1 Confidential - K. Raisler</p> <p>2 afternoon into the early evening.</p> <p>3 Q To the best of your recollection,</p> <p>4 sir, who was in attendance at that meeting?</p> <p>5 A Here again, there is a certain amount</p> <p>6 of vagueness in my recollection. Obviously</p> <p>7 representatives of Sullivan & Cromwell.</p> <p>8 Q Maybe it's easier to break it down,</p> <p>9 sir.</p> <p>10 A Right.</p> <p>11 Q Who else was there from Sullivan &</p> <p>12 Cromwell apart from you, sir?</p> <p>13 A I think on that day it may have only</p> <p>14 been me.</p> <p>15 Representatives from Barclays.</p> <p>16 Q Who were the representatives from</p> <p>17 Barclays, sir?</p> <p>18 A Again, it's a little bit of a blur,</p> <p>19 but my best guess would be Tim Stack, Liz James,</p> <p>20 Alex Guest. Those are the only ones I am sure of.</p> <p>21 I know there were more than that in the room, but</p> <p>22 I just don't remember who they were.</p> <p>23 Q Do you remember the names,</p> <p>24 Mr. Raisler, of the Lehman representatives who</p> <p>25 were present at that meeting on the 15th?</p>

Page 10	Page 11
<p>1 Confidential - K. Raisler</p> <p>2 A The only person I precisely remember</p> <p>3 was Jeff Jennings. Again, there were more people</p> <p>4 from Lehman than that in the room.</p> <p>5 Q Do you remember what Mr. Jennings'</p> <p>6 role or title was at Lehman?</p> <p>7 A He ran the futures division for</p> <p>8 Lehman.</p> <p>9 If I can just amend my prior answer.</p> <p>10 I also recall, I believe, that a gentleman by the</p> <p>11 name of Ron Filler was in the room as well.</p> <p>12 Q Who was Mr. Filler representing?</p> <p>13 A Ron was a consultant for Lehman. He</p> <p>14 had run their futures division up until May of</p> <p>15 2008, when he retired, and was brought back to</p> <p>16 help on this transaction.</p> <p>17 Q To your understanding, sir, what was</p> <p>18 the purpose of this meeting on the 15th?</p> <p>19 A It was to explore what was involved</p> <p>20 in taking over the futures and futures-related</p> <p>21 businesses of Lehman by Barclays.</p> <p>22 Q As of September 15th, Mr. Raisler,</p> <p>23 did you have an understanding as to the</p> <p>24 interactions, if any, or the relationship, if any,</p> <p>25 between Barclays' consideration to purchase the</p>	<p>1 Confidential - K. Raisler</p> <p>2 futures business of Lehman, and the potential</p> <p>3 purchase by Barclays of other assets of the Lehman</p> <p>4 broker dealer?</p> <p>5 MS. BLOOMER: I am going to object</p> <p>6 and just instruct the witness to be sure --</p> <p>7 I will do this throughout the day when</p> <p>8 questions seem to call for it. As a general</p> <p>9 matter, please do not convey the substance</p> <p>10 of the discussions you had with counsel or</p> <p>11 with Barclays.</p> <p>12 I apologize. Go ahead.</p> <p>13 A At a high level, yes. I generally</p> <p>14 knew there were other lawyers at Sullivan &</p> <p>15 Cromwell working on a bigger transaction, and I</p> <p>16 also knew that Cleary Gottlieb was involved in a</p> <p>17 broader transaction, but I really was far from the</p> <p>18 details of that.</p> <p>19 Q Were you involved, Mr. Raisler, at</p> <p>20 any time prior to the closing of the transaction</p> <p>21 before the markets opened on the 22nd of</p> <p>22 September, in any aspect of the, what I will call</p> <p>23 the broader purchase of assets from Lehman, other</p> <p>24 than the futures business?</p> <p>25 MS. BLOOMER: Objection to form.</p>
Page 12	Page 13
<p>1 Confidential - K. Raisler</p> <p>2 A The only other aspect related to the</p> <p>3 business, the options business, of Lehman and, in</p> <p>4 particular, dealings with the OCC.</p> <p>5 Q Do you have any notes of your meeting</p> <p>6 from the 15th, sir?</p> <p>7 A I do not.</p> <p>8 Q Is it your routine practice to take</p> <p>9 notes at such meetings?</p> <p>10 A Actually, it's my routine practice</p> <p>11 not to take notes. I very rarely take notes of</p> <p>12 anything.</p> <p>13 Q You said, Mr. Raisler, that the</p> <p>14 purpose of the meeting was to explore what would</p> <p>15 be involved in Barclays taking over the futures</p> <p>16 and futures-related business of Lehman. Can you</p> <p>17 be a little more specific about the discussions in</p> <p>18 that regard, sir?</p> <p>19 A To not distinguish the events of the</p> <p>20 15th specifically from the events of the days that</p> <p>21 followed, we were looking at and engaging in due</p> <p>22 diligence to explore a transfer of all of the</p> <p>23 futures accounts and related assets of Lehman to</p> <p>24 Barclays.</p> <p>25 Q Was it your understanding, sir, that</p>	<p>1 Confidential - K. Raisler</p> <p>2 a business agreement had been reached between</p> <p>3 Lehman and Barclays to transfer the assets that</p> <p>4 you referenced in your prior answer?</p> <p>5 MS. BLOOMER: Objection to the form,</p> <p>6 vague as to time frame.</p> <p>7 A As of what time would that -- as of</p> <p>8 the 15th, no.</p> <p>9 Q Did you at any time, Mr. Raisler,</p> <p>10 come to learn that a business deal had been</p> <p>11 reached between Lehman and Barclays to purchase</p> <p>12 any assets related to Lehman's futures business?</p> <p>13 A I was vaguely familiar with the</p> <p>14 negotiation of the asset purchase agreement. I</p> <p>15 don't know that it influenced what I was doing in</p> <p>16 any meaningful way during the course of that week.</p> <p>17 Q How was it, sir, that you were</p> <p>18 familiar with the negotiations of the asset</p> <p>19 purchase agreement?</p> <p>20 MS. BLOOMER: Objection. Just</p> <p>21 instructing the witness not to disclose the</p> <p>22 substance of communications with Barclays.</p> <p>23 A Can I have your question read back,</p> <p>24 please?</p> <p>25 Q Sure.</p>

Page 14	Page 15
<p>1 Confidential - K. Raisler 2 (Record read.) 3 A To be clear, I wasn't -- I wasn't 4 familiar with the negotiations of it per se. I 5 was familiar that there had been some kind of an 6 agreement entered into. And I would have learned 7 that from counsel. 8 Q From counsel for whom, sir? 9 A Most likely, other colleagues at 10 Sullivan & Cromwell. 11 Q Do you know when you learned that 12 information, sir? 13 A Again, somewhat of a blur, but likely 14 on the 16th or 17th. 15 Q Do you say that because you 16 understand that the asset purchase agreement was 17 finalized and signed around that time period? 18 MS. BLOOMER: Objection, form, 19 mischaracterizes his testimony. 20 A No. I think I learned of it then. 21 Q Is it fair to characterize the 22 meetings that you were in, sir, as due diligence 23 meetings rather than meetings in which the 24 negotiations of the underlying business deal 25 between Barclays and Lehman in connection with the</p>	<p>1 Confidential - K. Raisler 2 futures business took place? 3 MS. BLOOMER: Objection to form. 4 A I would certainly agree it was not 5 the latter. 6 Q So you weren't involved, sir, in any 7 negotiations of the business deal as -- as it 8 related to Barclays' purchase of Lehman's futures 9 business? 10 A To my best recollection, I was not 11 involved at all in that. I believe in answering 12 your earlier question, I would have characterized 13 it as due diligence in a very broad sense as what 14 these meetings were about. 15 Q What, what is the reason for your 16 qualification, sir? 17 A I think people have different 18 definitions of due diligence, and I am sure we are 19 going to get to an opportunity to discuss in more 20 detail what I did. I don't know. Some people 21 might have described what I was doing as due 22 diligence. Some people might have described it as 23 sort of something else. So I just want to leave 24 some latitude for that explanation. 25 Q Do you have any recollection, sir, of</p>
Page 16	Page 17
<p>1 Confidential - K. Raisler 2 the information that Barclays requested during 3 that meeting on the 15th? 4 A Again, the meetings for me blur 5 during the course of the 15th versus 16th versus 6 17th. 7 I believe that among the information 8 that was being requested was the exchanges on 9 which Lehman had positions, either proprietary or 10 customer; the regulators that they were dealing 11 with around the world, and, broadly stated, the 12 information around the positions and assets that 13 were held in those markets. 14 Q During that meeting on the 15th, sir, 15 were the representatives of Lehman able to provide 16 some or all of the information that you have just 17 described as requested by Barclays? 18 A Only at the very highest level. I 19 believe we started to collect information about 20 the markets that they were in, whether they were 21 clearing members in those markets or cleared 22 through third parties, and regulators that they 23 had dealt with. 24 To be clear, the information was 25 dramatically incomplete.</p>	<p>1 Confidential - K. Raisler 2 Q Lehman was unable to provide a list 3 of the markets in which it was a clearing member? 4 A There was vagueness and uncertainty 5 about that in certain markets around the world. 6 Q Was Lehman able to provide any 7 information about the markets in which it was a 8 clearing member? 9 A Yes, certainly it did provide 10 information, although it, too, was incomplete, 11 about markets in the U.S. 12 Q In what regard was the information 13 incomplete, sir? 14 A Well, it was able to provide us with 15 information as to where it was a clearing member. 16 It was not be able to tell us whether it had any 17 positions in those markets where it was a clearing 18 member, or the size and contours of those 19 positions. 20 Q Do you have an understanding of why 21 Lehman was unable to provide the information about 22 the positions or the size or contours of those 23 positions? 24 A Only at the most general level. The 25 impression I had was that the days leading up to</p>

<p style="text-align: right;">Page 18</p> <p>1 Confidential - K. Raisler</p> <p>2 the 15th of September had been extremely chaotic</p> <p>3 for the staff, and they just didn't have a handle</p> <p>4 on it.</p> <p>5 Q As the meetings progressed through</p> <p>6 the week of the 15th, sir, was Lehman able to</p> <p>7 provide further information about the positions in</p> <p>8 the markets in which it was a clearing member?</p> <p>9 A We did obtain more information as the</p> <p>10 week went on, yes.</p> <p>11 Q Can you tell me about that</p> <p>12 information, please.</p> <p>13 A I was delegated the responsibility to</p> <p>14 reach out to each of the exchanges and, where</p> <p>15 different, clearing houses, to establish contact</p> <p>16 and obtain information. And when I say obtain</p> <p>17 information, I am referring to basically</p> <p>18 information about what would be involved in our</p> <p>19 moving the positions from Barclays to Lehman.</p> <p>20 MR. LACY: I think you misspoke.</p> <p>21 A I'm sorry, Lehman to Barclays. Thank</p> <p>22 you. It's probably the only time I will do that</p> <p>23 today; right?</p> <p>24 Q If you only do it once, sir, you will</p> <p>25 be in a minority of one, and I will congratulate</p>	<p style="text-align: right;">Page 19</p> <p>1 Confidential - K. Raisler</p> <p>2 you.</p> <p>3 A And in the course of that, there were</p> <p>4 questions that I raised with Lehman officers, and</p> <p>5 that was part of the way in which we got more</p> <p>6 information.</p> <p>7 Q Which Lehman officers did you raise</p> <p>8 questions with, sir?</p> <p>9 A Well, I think mostly my recollection</p> <p>10 was with Jeff Jennings and Ron Filler.</p> <p>11 Q Who delegated the responsibility to</p> <p>12 you, Mr. Raisler, to reach out to the exchanges</p> <p>13 and clearing houses?</p> <p>14 A Probably representatives of Barclays.</p> <p>15 Q And did you reach out to all clearing</p> <p>16 organizations and exchanges of which Barclays was</p> <p>17 a member in the U.S. and outside of the U.S.?</p> <p>18 MS. BLOOMER: Did you mean Barclays</p> <p>19 there or Lehman?</p> <p>20 MR. OXFORD: Sorry, sorry. There we</p> <p>21 go. Thank you, Trish. Didn't take long.</p> <p>22 It's infectious.</p> <p>23 THE WITNESS: Right.</p> <p>24 Q Let me try that again.</p> <p>25 Did you reach out, Mr. Raisler, to</p>
<p style="text-align: right;">Page 20</p> <p>1 Confidential - K. Raisler</p> <p>2 all clearing organizations and exchanges of which</p> <p>3 Lehman was a member both in the U.S. and outside</p> <p>4 of the U.S.?</p> <p>5 A Outside the U.S., definitely no.</p> <p>6 Inside the U.S., I believe I reached out to all of</p> <p>7 them. There may have been one missing.</p> <p>8 Q Are you able, sitting here today, to</p> <p>9 give me a list of the organizations that you</p> <p>10 reached out to in this matter?</p> <p>11 A I can give you my best recollection.</p> <p>12 It would have been the Chicago Mercantile</p> <p>13 Exchange, which would have embraced the positions</p> <p>14 of its divisions, including the Chicago Board of</p> <p>15 Trade and NYMEX, ICE futures U.S., formerly known</p> <p>16 as the New York Board of Trade, the Chicago</p> <p>17 Climate Futures Exchange.</p> <p>18 I don't recall initially reaching out</p> <p>19 to the CBOE Futures Exchange because I don't</p> <p>20 believe we knew that they had any positions there</p> <p>21 for several days.</p> <p>22 I think I reached out to the Kansas</p> <p>23 City Board of Trade, even though Lehman was not a</p> <p>24 clearing member of the Kansas City Board of Trade.</p> <p>25 But we did know they had positions there.</p>	<p style="text-align: right;">Page 21</p> <p>1 Confidential - K. Raisler</p> <p>2 I don't recall, although I believe</p> <p>3 just an absence of memory, which non-U.S.</p> <p>4 exchanges I reached out to. As a general matter,</p> <p>5 Lehman, LBI, the entity that we were dealing with,</p> <p>6 was not a clearing member on those foreign</p> <p>7 exchanges, and that might be why I don't have a</p> <p>8 distinct memory of speaking to people about them.</p> <p>9 Q If Lehman was not a clearing member</p> <p>10 of foreign exchanges, sir, did it use a foreign</p> <p>11 FCM?</p> <p>12 A It did use a -- well, outside the</p> <p>13 U.S. they would not have been called necessarily</p> <p>14 FCMs.</p> <p>15 Q I understand.</p> <p>16 A But it would have used a clearing</p> <p>17 broker in those jurisdictions. That clearing</p> <p>18 broker could have been an affiliate, and in many</p> <p>19 cases was.</p> <p>20 Q Did you reach out to any of Lehman's</p> <p>21 clearing brokers that they used to clear futures</p> <p>22 outside of the U.S., sir?</p> <p>23 A I think that was part of the problem.</p> <p>24 Many of those, many of those clearing</p> <p>25 relationships were with affiliates. There wasn't</p>

Page 22	Page 23
<p>1 Confidential - K. Raisler</p> <p>2 anybody easily you could get ahold of to talk to</p> <p>3 about it.</p> <p>4 Q I am limiting my question to the</p> <p>5 clearing brokers outside of the U.S. who are not</p> <p>6 affiliates, sir.</p> <p>7 A Okay.</p> <p>8 Q Did you reach out to any such</p> <p>9 organizations in connection with the authority</p> <p>10 that was delegated to you by Barclays?</p> <p>11 MS. BLOOMER: Objection, vague as to</p> <p>12 time frame.</p> <p>13 A The only one I remember, and this</p> <p>14 memory is not that distinct, was Macquarie in</p> <p>15 Australia.</p> <p>16 Q What do you recall about reaching out</p> <p>17 to Macquarie in Australia, sir?</p> <p>18 A Just an attempt to try to find</p> <p>19 information about what they knew about the</p> <p>20 positions in the markets in Australia.</p> <p>21 Q Do you remember if that attempt was</p> <p>22 successful, sir?</p> <p>23 A I remember it as not being</p> <p>24 successful. We didn't get a very good report from</p> <p>25 them as to what was going on.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Just to elaborate a bit, I also</p> <p>3 believe that Ron Filler was reaching out to some</p> <p>4 of the foreign clearing relationships during the</p> <p>5 same time period and reporting back as well.</p> <p>6 Q Reporting back to whom, sir?</p> <p>7 A This group meeting that started on</p> <p>8 Monday and sort of went through the week of</p> <p>9 Barclays and Lehman representatives.</p> <p>10 Q Did you reach out, Mr. Raisler, to</p> <p>11 any Lehman affiliates who acted as clearing</p> <p>12 brokers outside of the U.S.?</p> <p>13 A To my best recollection, I did not.</p> <p>14 Q Do you know if anybody else did reach</p> <p>15 out to Lehman clearing affiliates?</p> <p>16 A If anybody had, it probably would</p> <p>17 have been Filler. But I don't remember -- I guess</p> <p>18 I don't remember much by way of results there, so</p> <p>19 I don't know whether attempts were made or not.</p> <p>20 Q How was it that you reached out to</p> <p>21 the clearing organizations and exchanges in the</p> <p>22 U.S., sir? Did you have a telephone call with</p> <p>23 them? Did you e-mail them?</p> <p>24 A In each case, it would have been by</p> <p>25 phone. I would have spoken to any number of</p>
Page 24	Page 25
<p>1 Confidential - K. Raisler</p> <p>2 people within those organizations, usually in the</p> <p>3 first instance through the general counsel's</p> <p>4 office.</p> <p>5 Q Turning first to the CME, sir, were</p> <p>6 you able to obtain any information by reaching out</p> <p>7 to the CME about what would be involved in moving</p> <p>8 the Lehman positions to Barclays?</p> <p>9 A Yes. I would say the CME was</p> <p>10 probably the most transparent and cooperative, the</p> <p>11 one most anxious to make sure it went smoothly.</p> <p>12 Q Did you have a primary contact at the</p> <p>13 CME, sir?</p> <p>14 A Probably two people. It would have</p> <p>15 been Jerry Salzman, who is the outside counsel to</p> <p>16 the CME.</p> <p>17 Q Is he at Skadden?</p> <p>18 A He is currently, yes.</p> <p>19 Q Was he with Skadden at the time?</p> <p>20 A I am not sure. He had his own firm</p> <p>21 and moved over to Skadden around that time. I</p> <p>22 don't remember precisely. It could have been a</p> <p>23 little before, a little after.</p> <p>24 And Kim Taylor, who runs the CME</p> <p>25 clearing house.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Do you remember when you first</p> <p>3 reached out to the CME, Mr. Raisler?</p> <p>4 A Not precisely, but it wouldn't</p> <p>5 surprise me if it had been that Monday, the 15th.</p> <p>6 Q Did you continue your discussions</p> <p>7 with the CME and its representatives throughout</p> <p>8 the week of the 15th, sir?</p> <p>9 A Certainly through Thursday. I don't</p> <p>10 remember any discussions with them on Friday.</p> <p>11 Q At the CME, Mr. Raisler, did you ask</p> <p>12 for information about Lehman's proprietary or</p> <p>13 customer positions?</p> <p>14 A In each case when I made inquiry of</p> <p>15 any exchange or clearing house, I was seeking</p> <p>16 information at the highest level. I wasn't</p> <p>17 looking at what the nature or type of their</p> <p>18 positions was. I was more interested in</p> <p>19 understanding from them whether they saw any</p> <p>20 impediments to moving those positions to Lehman,</p> <p>21 from Lehman to Barclays.</p> <p>22 So I think my answer to your question</p> <p>23 is yes, sort of.</p> <p>24 Q Is it accurate, Mr. Raisler, to say</p> <p>25 that you did not ask for any information at the</p>

<p style="text-align: right;">Page 26</p> <p>1 Confidential - K. Raisler</p> <p>2 CME about the substance and nature of Lehman's</p> <p>3 customer or proprietary positions at the CME? Is</p> <p>4 that accurate?</p> <p>5 MS. BLOOMER: Objection to form.</p> <p>6 A I would say that is not accurate. I</p> <p>7 would say I asked both custom and nature, but not</p> <p>8 the particulars of the positions. So I was</p> <p>9 interested in knowing which markets, on which</p> <p>10 markets they had positions, and whether there were</p> <p>11 any complications associated with those positions</p> <p>12 that would hinder their movement to Barclays.</p> <p>13 Q But you didn't ask what the size of</p> <p>14 those positions were, for example?</p> <p>15 A I did not. I am not sure absent a</p> <p>16 more complex process they would have been able to</p> <p>17 give me that information, because it was not in</p> <p>18 the first instance Barclays information.</p> <p>19 Q And at this stage that information is</p> <p>20 proprietary to Lehman?</p> <p>21 A Correct.</p> <p>22 Q Did you consider the proprietary</p> <p>23 nature of this information to be a barrier to you</p> <p>24 asking for information about the size of these</p> <p>25 positions and any collateral held to secure them?</p>	<p style="text-align: right;">Page 27</p> <p>1 Confidential - K. Raisler</p> <p>2 A I was not delegated that</p> <p>3 responsibility, so I never really thought in those</p> <p>4 terms.</p> <p>5 Q Was there someone else, to your</p> <p>6 knowledge, Mr. Raisler, who was delegated the task</p> <p>7 to attempt to ascertain whether -- at the CME or</p> <p>8 elsewhere -- what the size and nature was of</p> <p>9 Lehman's customer and proprietary futures</p> <p>10 positions?</p> <p>11 A Generally speaking, again, based on</p> <p>12 these meetings that we had, the operations people</p> <p>13 within Barclays would have been attempting to get</p> <p>14 information of that sort from their counterpart at</p> <p>15 Lehman.</p> <p>16 Q Do you know who the operations people</p> <p>17 within Barclays were who were responsible for this</p> <p>18 attempt to get information?</p> <p>19 A That team would have been led by Liz</p> <p>20 James.</p> <p>21 Q Do you know who else was on that team</p> <p>22 reporting up to Liz James?</p> <p>23 A I am not that good at names and I</p> <p>24 don't recall.</p> <p>25 Q As a general matter, sir, would you</p>
<p style="text-align: right;">Page 28</p> <p>1 Confidential - K. Raisler</p> <p>2 expect the CME to be able to provide to Lehman a</p> <p>3 list of the Lehman customer and proprietary</p> <p>4 positions and any collateral the CME held in</p> <p>5 respect of those positions?</p> <p>6 MR. LACY: Object to the form of the</p> <p>7 question.</p> <p>8 A It's a somewhat more complicated</p> <p>9 question than I think you intend. To a certain</p> <p>10 extent, the answer to your question should be yes.</p> <p>11 I think some of the information, though, that</p> <p>12 would be transmitted would have to be digested by</p> <p>13 Lehman, because they would be the only ones who</p> <p>14 would know certain pieces of information that the</p> <p>15 CME would not know.</p> <p>16 Q What information would Lehman only</p> <p>17 know but the CME wouldn't know in connection with</p> <p>18 your last answer, sir?</p> <p>19 A The CME carries all of the customer</p> <p>20 positions of Lehman in a single account, and so to</p> <p>21 the extent that Lehman was able to get that -- to</p> <p>22 the extent that the CME was able to get that</p> <p>23 information to Lehman, it would be in an aggregate</p> <p>24 form. It wouldn't be delineated by customer.</p> <p>25 Q I understand.</p>	<p style="text-align: right;">Page 29</p> <p>1 Confidential - K. Raisler</p> <p>2 Is there any other information that</p> <p>3 you were referring to other than the breakdown by</p> <p>4 customer in your answer two answers ago?</p> <p>5 A That would likely be the largest</p> <p>6 impediment to getting a clean piece of</p> <p>7 information.</p> <p>8 Q Would your answer also apply not just</p> <p>9 to the CME, but to any clearing organization, sir?</p> <p>10 MS. BLOOMER: Objection to form.</p> <p>11 A I think that generally the answer</p> <p>12 should be yes. I believe the sophistication of</p> <p>13 some of the other clearing organizations and their</p> <p>14 ability to get that information may be slower, but</p> <p>15 the answer should be yes, at some point in time.</p> <p>16 Q You said you also spoke to ICE</p> <p>17 Futures U.S., Mr. Raisler.</p> <p>18 A Correct.</p> <p>19 Q Can you tell me about your</p> <p>20 conversations with them, please?</p> <p>21 A I don't, I don't want to imply in</p> <p>22 answering this question that I have given you the</p> <p>23 answer to the question with respect to the CME. I</p> <p>24 don't think you asked this question with respect</p> <p>25 to the CME.</p>

Page 30	Page 31
<p>1 Confidential - K. Raisler</p> <p>2 Q I understand that.</p> <p>3 A Okay.</p> <p>4 Q Focusing specifically on the --</p> <p>5 A ICE Futures.</p> <p>6 Q -- ICE Futures U.S., can you tell me</p> <p>7 about your conversation.</p> <p>8 A Again, it was a discussion about</p> <p>9 moving the positions that they were carrying to</p> <p>10 Barclays, but the discussion focused mostly on</p> <p>11 their insecurity about Lehman's continuing ability</p> <p>12 to perform and their worry if there was inadequate</p> <p>13 margin at ICE Futures what would happen.</p> <p>14 Q Were those insecurities or worries</p> <p>15 assuaged in any way, to your knowledge, sir?</p> <p>16 A We were not able to assuage those</p> <p>17 insecurities, no.</p> <p>18 Q Did anything happen as a result of</p> <p>19 this inability to assuage their concerns?</p> <p>20 A We are speaking now with respect to</p> <p>21 ICE Futures?</p> <p>22 Q Yes.</p> <p>23 A They, as with any U.S. clearing</p> <p>24 house, have the right, if they have this</p> <p>25 insecurity, to take over the positions and to</p>	<p>1 Confidential - K. Raisler</p> <p>2 liquidate them or to auction them off.</p> <p>3 Ultimately, that is what ICE Futures did with</p> <p>4 respect to the proprietary positions of Lehman</p> <p>5 that were on their exchange.</p> <p>6 Q Do you have any information, sir,</p> <p>7 about the nature of the propriety positions that</p> <p>8 Lehman had prior to this auctioning off?</p> <p>9 A My recollection is imprecise, but I</p> <p>10 believe that Lehman had some stock index products</p> <p>11 that were trading on ICE Futures, among other</p> <p>12 things.</p> <p>13 Q Do you know when the auction</p> <p>14 happened, sir?</p> <p>15 A I don't precisely recall whether it</p> <p>16 was an auction or whether it was just a</p> <p>17 liquidation. I think it was an auction. I only</p> <p>18 recall it occurred after the CME's auction. I</p> <p>19 don't recall exactly when. Maybe a day later.</p> <p>20 Q To the best of your recollection,</p> <p>21 sir, when was the CME's auction?</p> <p>22 A The CME's auction started the morning</p> <p>23 of the 18th of September.</p> <p>24 Q So you think ICE Futures had an</p> <p>25 auction after the 18th or at least after the</p>
Page 32	Page 33
<p>1 Confidential - K. Raisler</p> <p>2 morning of the 18th, but was it also prior to the</p> <p>3 closing of the transaction on the 22nd, sir?</p> <p>4 A My best recollection is yes. But I</p> <p>5 am not -- I am much more certain about what the</p> <p>6 CME did. The ICE position was not that large</p> <p>7 compared to the CME's.</p> <p>8 Q Do you have a sense, sir, of how</p> <p>9 large the ICE position was?</p> <p>10 A My recollection, in the scheme of</p> <p>11 things at the time, it was a relatively small</p> <p>12 position.</p> <p>13 Q Do you have any information,</p> <p>14 Mr. Raisler, as to the nature and amount of any</p> <p>15 collateral that Lehman held in respect of the ICE</p> <p>16 Futures?</p> <p>17 A I don't. And I wouldn't have known</p> <p>18 that then.</p> <p>19 Q Do you have any information about any</p> <p>20 collateral that ICE rather than Lehman would have</p> <p>21 held in respect to those positions that were</p> <p>22 liquidated?</p> <p>23 MR. LACY: Object to the form of the</p> <p>24 question.</p> <p>25 A I am not sure I understand that</p>	<p>1 Confidential - K. Raisler</p> <p>2 question.</p> <p>3 Q I was simply making sure that I had</p> <p>4 asked about your knowledge with respect to any</p> <p>5 collateral held by Lehman and any collateral</p> <p>6 posted at the exchange, sir. Do you understand</p> <p>7 the distinction I am making?</p> <p>8 A Yes. And I wasn't intending to</p> <p>9 distinguish between the two.</p> <p>10 Q Do you know, Mr. Raisler, whether or</p> <p>11 not Barclays purchased any of the positions that</p> <p>12 were either liquidated or auctioned by ICE?</p> <p>13 A I never heard that one way or the</p> <p>14 other, no.</p> <p>15 Q Did the CME, to your knowledge, sir,</p> <p>16 have similar concerns to ICE about the ability of</p> <p>17 Lehman to continue to perform its obligations as a</p> <p>18 clearing member?</p> <p>19 A Yes.</p> <p>20 Q How is it that you came to learn</p> <p>21 that?</p> <p>22 A This was something that was mentioned</p> <p>23 as early as my first conversation with them. As I</p> <p>24 testified, I think it was on the 15th. It</p> <p>25 culminated in a conversation I had with them</p>

Page 34	Page 35
<p>1 Confidential - K. Raisler</p> <p>2 between 11 p.m. and midnight on the 17th of</p> <p>3 September, in which they asked -- let me begin</p> <p>4 that sentence over again, if I can.</p> <p>5 I received a call, I received several</p> <p>6 calls that evening from representatives of the</p> <p>7 CME, which I was at a dinner and was not able to</p> <p>8 catch up with. When I did get the messages, I</p> <p>9 called them back sometime between 11 p.m. and</p> <p>10 midnight. I got a number of people at the CME at</p> <p>11 that time on the phone.</p> <p>12 They asked me, consistent with the</p> <p>13 discussions we had had leading up to this point,</p> <p>14 whether Barclays was prepared to guarantee</p> <p>15 Lehman's proprietary positions at the exchange.</p> <p>16 I told them I would get back to them</p> <p>17 the following morning, as it was almost midnight.</p> <p>18 They told me that was not satisfactory, that they</p> <p>19 needed an answer within an hour, and that absent a</p> <p>20 guarantee, they would commence an auction first</p> <p>21 thing in the morning.</p> <p>22 Q Were you able to get them an answer</p> <p>23 to their question within an hour, sir?</p> <p>24 A I was able to get them an answer</p> <p>25 within an hour, and I was -- I told them that</p>	<p>1 Confidential - K. Raisler</p> <p>2 Barclays was not in a position to guarantee the</p> <p>3 proprietary positions of Lehman, and that they had</p> <p>4 to do what they had to do.</p> <p>5 Q And did the CME then proceed to</p> <p>6 auction Lehman's proprietary positions at the CME?</p> <p>7 A That is my understanding, yes.</p> <p>8 Q What is the basis of that</p> <p>9 understanding, sir?</p> <p>10 A They told me that.</p> <p>11 Q Who told you in particular?</p> <p>12 A Kim Taylor. Jerry Salzman.</p> <p>13 Phupinder Gill, a name I am not going to be able</p> <p>14 to spell or pronounce, who is the president of the</p> <p>15 exchange, was also on those calls.</p> <p>16 Q Apart from those three individuals,</p> <p>17 sir, do you remember anybody else being on those</p> <p>18 calls?</p> <p>19 A I think there were others. I don't</p> <p>20 remember who they were.</p> <p>21 Q Did you have an understanding, based</p> <p>22 on those calls or otherwise, of the size of</p> <p>23 Lehman's proprietary positions at the CME?</p> <p>24 A I understood them to be huge.</p> <p>25 Q Can you be any more specific, give me</p>
Page 36	Page 37
<p>1 Confidential - K. Raisler</p> <p>2 an order of magnitude other than huge?</p> <p>3 A Well, the exchange had explained to</p> <p>4 us that they thought that the exposure of those</p> <p>5 positions was enormous. Again, I am unable to put</p> <p>6 easy dollars around them. I do indicate in my</p> <p>7 declaration that the auction resulted in a</p> <p>8 movement of approximately \$1.6 billion in margin</p> <p>9 that had been posted at the exchange to the</p> <p>10 auction winners. I think that gives an idea of</p> <p>11 the scale of the positions.</p> <p>12 Q What is the basis for your statement</p> <p>13 in your declaration, which I believe is paragraph</p> <p>14 four, that you understand the auctioning off of</p> <p>15 LBI's proprietary futures positions at the CME led</p> <p>16 to a loss of approximately \$1.6 billion in</p> <p>17 collateral that LBI had posted at the CME?</p> <p>18 A Someone at Barclays had told me that.</p> <p>19 I don't recall precisely who that was or how I got</p> <p>20 that information.</p> <p>21 MS. BLOOMER: And I am going to</p> <p>22 object. You shouldn't really go into that</p> <p>23 discussion in any detail. Sorry about the</p> <p>24 late objection, but --</p> <p>25 A I don't remember the who, what or</p>	<p>1 Confidential - K. Raisler</p> <p>2 where of when I got that information.</p> <p>3 Q And you don't remember, sitting here</p> <p>4 today, whether it was a legal representative of</p> <p>5 Barclays, whether external or internal, or whether</p> <p>6 it was a business person; is that correct?</p> <p>7 A I don't.</p> <p>8 Q And other than this conversation with</p> <p>9 an unnamed and unremembered person at Barclays,</p> <p>10 sir, do you have any basis for the statement that</p> <p>11 you make in the last sentence of your declaration?</p> <p>12 A I have some vague recollection. I</p> <p>13 also read it in a news article at one point, but I</p> <p>14 can't pin that down.</p> <p>15 Q It's not based on a review of</p> <p>16 documents related to the auction, sir?</p> <p>17 A It is not.</p> <p>18 Q It not based on conversations with</p> <p>19 anybody at the CME?</p> <p>20 A It is not.</p> <p>21 Q Did you have any discussions,</p> <p>22 Mr. Raisler, with anybody at the CME about the</p> <p>23 customer positions that Lehman held at the CME?</p> <p>24 A Yes. The dialogue starting on Monday</p> <p>25 with each of the exchanges, clearing houses, would</p>

Page 38	Page 39
<p>1 Confidential - K. Raisler</p> <p>2 have related to both the customer positions and</p> <p>3 the proprietary positions.</p> <p>4 Q Did the CME have similar concerns in</p> <p>5 respect of the customer positions that Lehman held</p> <p>6 as it did to the proprietary futures that you just</p> <p>7 testified about?</p> <p>8 MS. BLOOMER: Object to the form.</p> <p>9 A They had concerns. They were not of</p> <p>10 the same dimension.</p> <p>11 Q What were their concerns, sir?</p> <p>12 A Their concerns there again was that</p> <p>13 Lehman customers -- let me amend that.</p> <p>14 Their concerns were at two levels.</p> <p>15 One is, was Lehman able to administer, continue to</p> <p>16 administer the customer positions in an effective</p> <p>17 way. That is, did it have a handle on what was</p> <p>18 going on. Was it able to manage daily margin pays</p> <p>19 and collects.</p> <p>20 And then secondly, given the</p> <p>21 volatility and uncertainties in the market, were</p> <p>22 Lehman's customers going to be able to perform</p> <p>23 their obligations, because under the law, if they</p> <p>24 were not, Lehman would be backstopping those</p> <p>25 customers, and as we just discussed, the exchange</p>	<p>1 Confidential - K. Raisler</p> <p>2 was not confident of Lehman's ability to do that</p> <p>3 in the context of its proprietary book already, so</p> <p>4 it certainly would be concerned about their</p> <p>5 ability to do that with respect to the customer</p> <p>6 positions.</p> <p>7 Q Turning to the CME's first concern,</p> <p>8 about Lehman's ability to continue to administer</p> <p>9 or manage Lehman's customer positions, was that</p> <p>10 concern at the CME resolved, to your knowledge,</p> <p>11 sir?</p> <p>12 A The answer is no. Each day they had</p> <p>13 that concern, but each day they were apparently</p> <p>14 getting satisfactory results.</p> <p>15 I should point out that this was sort</p> <p>16 of a code red event not just for the CME but also</p> <p>17 for the Commodities Future Trading Commission. We</p> <p>18 haven't discussed them, but they were heavily</p> <p>19 involved as well in these discussions during the</p> <p>20 course of the week.</p> <p>21 Q Was the second concern of the CME the</p> <p>22 ability of Lehman's customers to perform, and if</p> <p>23 they were unable to perform, the ability of Lehman</p> <p>24 to be a backstop as they are required? Did that</p> <p>25 performance obligation -- was that concern</p>
Page 40	Page 41
<p>1 Confidential - K. Raisler</p> <p>2 resolved, to your knowledge, sir?</p> <p>3 A Not until the positions moved from</p> <p>4 Lehman to Barclays the following week.</p> <p>5 Q Do you have an understanding --</p> <p>6 withdrawn.</p> <p>7 The CME didn't do anything to close</p> <p>8 out those futures positions held on behalf of</p> <p>9 customers by Lehman?</p> <p>10 A They did not. They were just</p> <p>11 actively and aggressively monitoring daily and</p> <p>12 intraday what was going on.</p> <p>13 Q Do you have an understanding, sir, of</p> <p>14 how it is that the CME got comfortable such that</p> <p>15 they were willing to continue to clear Lehman's</p> <p>16 customer business?</p> <p>17 MR. LACY: Object to the form of that</p> <p>18 question.</p> <p>19 A I think the word "comfortable" would</p> <p>20 be a significant overstatement, given the amount</p> <p>21 of time and attention they were spending on this.</p> <p>22 Moving customer positions is not an easy process,</p> <p>23 compared to auctioning off proprietary positions.</p> <p>24 They needed to just monitor the positions very</p> <p>25 aggressively and make sure that there were no</p>	<p>1 Confidential - K. Raisler</p> <p>2 defaults. If there had been defaults, they would</p> <p>3 then have gone through a much more complicated</p> <p>4 process as to what to do next.</p> <p>5 So the answer is, in the few days</p> <p>6 they obviously were able to get through.</p> <p>7 Q To your knowledge, sir, did the CME</p> <p>8 hold collateral in respect of Lehman's customer</p> <p>9 futures positions?</p> <p>10 A Absolutely.</p> <p>11 Q Can you tell me what it is you know</p> <p>12 about the nature and extent of the collateral that</p> <p>13 the CME held in respect of those positions?</p> <p>14 A Well, to simplify, the positions that</p> <p>15 Lehman's customers had would have had initial</p> <p>16 margin associated with them, and that initial</p> <p>17 margin would have been posted with the CME</p> <p>18 clearing house. Typically, the clearing broker,</p> <p>19 in this case Lehman, would have additional funds</p> <p>20 posted with the clearing house as a buffer.</p> <p>21 And each day there would be mark to</p> <p>22 market variation margin that would be paid and</p> <p>23 collected on behalf of those customers as a group</p> <p>24 through the clearing house.</p> <p>25 Q Do you know whether in fact Lehman</p>

Page 42	Page 43
<p>1 Confidential - K. Raisler</p> <p>2 had posted additional funds as a buffer at the CME</p> <p>3 for its futures business for its customers?</p> <p>4 A I certainly came to know that. At</p> <p>5 what point in time I did know that -- I think I</p> <p>6 knew that early in the week.</p> <p>7 Q When you came to learn about the</p> <p>8 buffer, sir, did you come to learn about the size</p> <p>9 of the buffer?</p> <p>10 A I don't think I ever really knew sort</p> <p>11 of the scale of the positions, customer,</p> <p>12 proprietary, and the scale of the monies involved.</p> <p>13 Q Can you tell me, please, about your</p> <p>14 conversations with the Chicago Climate Futures</p> <p>15 Exchange.</p> <p>16 A My best recollection is that the only</p> <p>17 positions that were on that exchange were</p> <p>18 proprietary. There were no customer positions.</p> <p>19 But here again, I think the positions were very</p> <p>20 small.</p> <p>21 I believe the conversations were</p> <p>22 similar in that there were questions about</p> <p>23 insecurity and Lehman not being able to perform.</p> <p>24 Q Did the Chicago Climate Futures</p> <p>25 Exchange close out Lehman positions prior to the</p>	<p>1 Confidential - K. Raisler</p> <p>2 closing of the transaction, to your knowledge,</p> <p>3 Mr. Raisler?</p> <p>4 A I am not sure in terms of my memory.</p> <p>5 but it would be unlikely that they would have</p> <p>6 closed it out. It would have been more likely</p> <p>7 that they would have auctioned it. It would have</p> <p>8 been difficult to close it out.</p> <p>9 Q Do you know whether or not the</p> <p>10 Chicago Climate Futures Exchange auctioned any</p> <p>11 Lehman positions?</p> <p>12 A I don't have a real good</p> <p>13 recollection of that. Again, this was a</p> <p>14 relatively small matter, so it got blurred with</p> <p>15 the other activities.</p> <p>16 Q Do you remember who you spoke to at</p> <p>17 the Chicago Climate Futures Exchange?</p> <p>18 A Probably would have been their inside</p> <p>19 counsel, a woman by the name of Ann Cresce.</p> <p>20 C-R-E-S-C-E.</p> <p>21 Q I think you said you also spoke to</p> <p>22 someone at the Kansas City Board of Trade; is that</p> <p>23 correct?</p> <p>24 A Right. I don't remember the name of</p> <p>25 the person there.</p>
Page 44	Page 45
<p>1 Confidential - K. Raisler</p> <p>2 Q What do you recall about the</p> <p>3 substance of your conversations with that person,</p> <p>4 whoever that may be, who was the representative of</p> <p>5 the Kansas City Board of Trade?</p> <p>6 A In Kansas City, unlike the other U.S.</p> <p>7 exchanges we have discussed, Lehman was not a</p> <p>8 clearing member. It cleared through a broker.</p> <p>9 Who it was itself a member. So I would believe</p> <p>10 that the conversation was a somewhat higher level</p> <p>11 one, just to make sure that they knew what we were</p> <p>12 doing, and what was involved in the next steps.</p> <p>13 Q Do you recall whether the Kansas City</p> <p>14 Board of Trade had similar concerns to those of</p> <p>15 the CME?</p> <p>16 A Their concern -- first of all, their</p> <p>17 position was significantly smaller, probably the</p> <p>18 smallest of the lot. Also, they had the comfort</p> <p>19 that their clearing member provided them with,</p> <p>20 with backstop, if Lehman's customers did not</p> <p>21 perform, or if Lehman's proprietary positions</p> <p>22 didn't perform.</p> <p>23 Q You also had conversations, albeit</p> <p>24 perhaps not initially, with the CBOE?</p> <p>25 A Correct. And just to be clear on</p>	<p>1 Confidential - K. Raisler</p> <p>2 that, also the OCC, the Options Clearing Corp.,</p> <p>3 which clears for the CBOE.</p> <p>4 Q Okay. Focusing first on your</p> <p>5 conversations with the CBOE, Mr. Raisler, can you</p> <p>6 tell me what you recall about your conversations</p> <p>7 with the CBOE in the week of the 15th of</p> <p>8 September?</p> <p>9 A I don't think I had any conversations</p> <p>10 with them that week.</p> <p>11 Q Do you know whether anybody else at</p> <p>12 Sullivan & Cromwell had conversations with the</p> <p>13 CBOE that week?</p> <p>14 A It is possible that my partner, David</p> <p>15 Gilberg, could have had conversations with them</p> <p>16 that week, because he and I were splitting up some</p> <p>17 of these responsibilities to reach out to</p> <p>18 exchanges.</p> <p>19 Q Can you describe for me your role</p> <p>20 with respect to the futures due diligence, as you</p> <p>21 have described it, and Mr. Gilberg's role?</p> <p>22 A There was really not any separation</p> <p>23 between us. We worked together, and we just might</p> <p>24 have split up some of the responsibilities to</p> <p>25 reach out. But it was a team.</p>

Page 46	Page 47
<p>1 Confidential - K. Raisler</p> <p>2 Q Generally were you working separately</p> <p>3 in the sense that you would call and try and get</p> <p>4 information from a set list of exchanges or</p> <p>5 clearing organizations, and Mr. Gilberg would be</p> <p>6 tasked with getting that information from a</p> <p>7 different set of organizations?</p> <p>8 A Possible. I think it was more that</p> <p>9 we might -- one of us might do follow-up on the</p> <p>10 other -- it wasn't as discrete as you have</p> <p>11 described it.</p> <p>12 Q In the conversation, for example,</p> <p>13 with the CME that you have testified to today, was</p> <p>14 Mr. Gilberg also on those conference calls?</p> <p>15 A I don't recall he was on any of those</p> <p>16 calls. He could have been.</p> <p>17 Q And you don't believe Mr. Gilberg was</p> <p>18 in the initial meeting on the 15th, sir; is that</p> <p>19 correct?</p> <p>20 A My best recollection is no, although</p> <p>21 I am sure he was in some of the subsequent</p> <p>22 meetings.</p> <p>23 Q Why was it you came to have a</p> <p>24 conversation with the OCC in the week of the 15th,</p> <p>25 Mr. Raisler?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I am not sure -- first of all, I am</p> <p>3 not sure I have testified to that.</p> <p>4 Q Let me lay a foundation. Perhaps I</p> <p>5 misunderstood your earlier testimony. I didn't</p> <p>6 mean to mischaracterize it.</p> <p>7 Do you believe you had a conversation</p> <p>8 with any representative of the OCC in the week</p> <p>9 between the 15th of September and the closing of</p> <p>10 the transaction on the 22nd?</p> <p>11 MS. BLOOMER: Neil, whenever you are</p> <p>12 ready for a break, we probably should take</p> <p>13 one soon.</p> <p>14 A I am not sure. I know I had</p> <p>15 conversations with them the week of the 22nd. I</p> <p>16 don't recall conversations with them that week,</p> <p>17 although I could have had some.</p> <p>18 Just to elaborate on one point is</p> <p>19 that OCC also clears some futures contracts in</p> <p>20 addition to clearing options. And so they would</p> <p>21 have been a part of my remit to the extent that</p> <p>22 there were futures positions of Lehman proprietary</p> <p>23 or Lehman customers that cleared OCC, separate and</p> <p>24 apart from OCC's clearing of the equity options.</p> <p>25 Q Which types of futures contracts does</p>
Page 48	Page 49
<p>1 Confidential - K. Raisler</p> <p>2 the OCC clear?</p> <p>3 A They clear for the CBOE Futures</p> <p>4 Exchange, CFE. And in particular, the largest</p> <p>5 contract there is called the VIX contract, V-I-X,</p> <p>6 which is a volatility-based contract.</p> <p>7 MR. OXFORD: Okay. Does everybody</p> <p>8 want to take a five-minute break?</p> <p>9 MS. BLOOMER: This might be a good</p> <p>10 time.</p> <p>11 THE WITNESS: Sure.</p> <p>12 (Recess taken.)</p> <p>13 BY MR. OXFORD:</p> <p>14 Q Mr. Raisler, did you have any</p> <p>15 understanding one way or the other whether</p> <p>16 Barclays was one of the bidders for the Lehman</p> <p>17 proprietary positions at the CME that were</p> <p>18 auctioned off, I think you said the 18th of</p> <p>19 September, 2008?</p> <p>20 A I did not know that at the time. I</p> <p>21 heard that afterwards.</p> <p>22 MS. BLOOMER: I would just remind the</p> <p>23 witness not to disclose the substance of</p> <p>24 communications --</p> <p>25 THE WITNESS: Right.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I was not involved in any of that</p> <p>3 process. To the extent that Barclays was</p> <p>4 involved, I just heard about it afterwards.</p> <p>5 Q Do you know whether anyone from</p> <p>6 Sullivan & Cromwell was involved in that process?</p> <p>7 A I am virtually certain we were not.</p> <p>8 Q Other than the discussions you have</p> <p>9 already testified to this morning, Mr. Raisler, do</p> <p>10 you recall having any other discussion with the</p> <p>11 Chicago Mercantile Exchange during the week of the</p> <p>12 15th of September?</p> <p>13 A You know, I testified earlier that I</p> <p>14 didn't recall conversations with them on that</p> <p>15 Friday. But as I -- as I reflect on it, I think I</p> <p>16 did have a conversation with them on Friday. In</p> <p>17 particular, they had asked whether Barclays was</p> <p>18 prepared to guarantee the customer positions of</p> <p>19 Lehman over the weekend, 20th and 21st. I don't</p> <p>20 recall whether -- what exactly they said, if we</p> <p>21 weren't prepared to guarantee them, what they</p> <p>22 would do, but the clear implication was that they</p> <p>23 needed that guarantee; otherwise, they could</p> <p>24 potentially take action.</p> <p>25 And we did -- I did consult with</p>

Page 50	Page 51
<p>1 Confidential - K. Raisler</p> <p>2 Barclays and we did -- I did communicate to the</p> <p>3 CME sometime on Friday afternoon, the 19th, that</p> <p>4 Barclays was prepared to guarantee the customer</p> <p>5 positions of Lehman over the weekend.</p> <p>6 Q What do you mean by over the weekend,</p> <p>7 Mr. Raisler? Were these positions being traded</p> <p>8 over the weekend?</p> <p>9 A The positions do trade 24 hours a</p> <p>10 day. And obviously given the volatility in the</p> <p>11 markets, there could be substantial movements over</p> <p>12 a weekend, where there is generally less liquidity</p> <p>13 but still active mark to market trading.</p> <p>14 Q Did the CME also request of Barclays</p> <p>15 that Barclays guarantee the trading on the 22nd of</p> <p>16 September?</p> <p>17 A I think at the time that the</p> <p>18 conversation on Friday was for the weekend, which</p> <p>19 I would have assumed for the opening on Monday,</p> <p>20 but the transaction was expected to be</p> <p>21 accomplished so that by the opening on Monday the</p> <p>22 positions would be the responsibility of Barclays.</p> <p>23 Q Were you involved, Mr. Raisler, in</p> <p>24 creating any documents that relate to Barclays'</p> <p>25 agreement to guarantee Lehman's customer positions</p>	<p>1 Confidential - K. Raisler</p> <p>2 over the weekend of the 21st and I guess the 20th</p> <p>3 of September?</p> <p>4 A Curious, I don't recall preparing any</p> <p>5 documents. I -- it could have been, I just don't</p> <p>6 recall.</p> <p>7 Q To your knowledge, sir, was Barclay's</p> <p>8 asked to guarantee any other of Lehman's customer</p> <p>9 positions at any time between the 15th of</p> <p>10 September and the closing of the transaction on</p> <p>11 the 22nd?</p> <p>12 THE WITNESS: I'm sorry, could I have</p> <p>13 that read back, please.</p> <p>14 (Record read.)</p> <p>15 A OCC made a similar demand -- I think</p> <p>16 before the break I was not certain about</p> <p>17 conversations with OCC that week, but I did have</p> <p>18 conversations with OCC that Thursday and Friday,</p> <p>19 in which they were insecure. Friday is actually</p> <p>20 an expiration date for options, and they wanted to</p> <p>21 make sure that the positions would be secured by</p> <p>22 Barclays, again over the weekend, during the</p> <p>23 settlement period. And here specifically customer</p> <p>24 positions.</p> <p>25 Q With whom at the OCC or on whose</p>
Page 52	Page 53
<p>1 Confidential - K. Raisler</p> <p>2 behalf -- withdrawn.</p> <p>3 Did you talk to someone within the</p> <p>4 OCC, or was it their outside counsel?</p> <p>5 A Both. I would have spoken to Bill</p> <p>6 Navin, who is the inside general counsel, and Jim</p> <p>7 McDaniel at Sidley, who is their outside counsel.</p> <p>8 Q And as best you recall, sir, these</p> <p>9 conversations took place on Thursday, the 18th of</p> <p>10 September, and Friday, the 19th of September?</p> <p>11 A Correct.</p> <p>12 Q Was the demand made by the OCC for a</p> <p>13 guarantee of customer positions at the OCC or firm</p> <p>14 positions at the OCC or both?</p> <p>15 A My recollection, it was both.</p> <p>16 Q And did the demand, sir, to your</p> <p>17 knowledge, relate only to the futures that were</p> <p>18 cleared through the OCC or was it all positions</p> <p>19 including equity options that were cleared through</p> <p>20 the OCC?</p> <p>21 A It's interesting, because as of</p> <p>22 Thursday and Friday, we were not aware that there</p> <p>23 were any futures positions, so it would have been</p> <p>24 at least in our thinking exclusively with respect</p> <p>25 to the options positions.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q When you say "we," sir, were not</p> <p>3 aware of the futures positions, are you talking</p> <p>4 about Sullivan & Cromwell or Barclays or anybody</p> <p>5 representing Barclays?</p> <p>6 A Sullivan & Cromwell and Barclays were</p> <p>7 not aware of any futures positions until I believe</p> <p>8 Saturday, the 20th.</p> <p>9 Q How is it, sir, that you came to</p> <p>10 learn about the futures positions at the OCC on</p> <p>11 Saturday, the 20th of September?</p> <p>12 A I am waiting for her privilege</p> <p>13 admonition.</p> <p>14 MS. BLOOMER: Whether I object or</p> <p>15 not, a standing objection for sure.</p> <p>16 Q And presumably a standing admonition</p> <p>17 as well.</p> <p>18 A Conversations with Barclays.</p> <p>19 Q Since you were dealing with the</p> <p>20 futures side of the transaction, sir, and you just</p> <p>21 told me that Barclays and certainly you didn't</p> <p>22 know about the futures positions at the OCC until</p> <p>23 the weekend, can you tell me how it is you came to</p> <p>24 have a conversation with Mr. Navin and</p> <p>25 Mr. McDaniel a day or two prior to that about</p>

1 Confidential - K. Raisler
2 their request that Barclays guarantee positions of
3 Lehman at the OCC?

4 A It's a good question, actually. It's
5 not really clear to me. I think everybody was
6 sort of scrambling around. I knew the people at
7 the OCC very well. And I am -- I am assuming at
8 some point somebody asked me to reach out to them,
9 and that's why I did. I don't recall specifically
10 sort of how that came to pass.

11 Q Can you tell me, Mr. Raisler, as best
12 you can recall, everything about the conversations
13 you had with Mr. Navin and Mr. McDaniel about the
14 OCC's demand for this guarantee of Lehman's
15 positions, both customer and proprietary, at the
16 OCC?

17 MS. BLOOMER: Objection to form.

18 A My best recollection was that Friday
19 was an expiration date for options, that there was
20 very substantial volatility in the market,
21 particularly around equity and equity options
22 trading. And it could even have been that OCC
23 reached out to me. But that they were very
24 concerned that they were not getting good
25 information about the status of Lehman, and they

1 Confidential - K. Raisler

2 Q Did you take that request back to
3 Barclays, sir?

4 A I am sure I did.

5 Q Do you remember whether or not you
6 communicated a response from Barclays back to the
7 OCC?

8 A My best recollection is that I did,
9 and that I assured them that that would be
10 something that would be undertaken.

11 Q Being as precise as possible, right,
12 in asking you, given all this happened about 18
13 months ago, can you tell me what it is that you
14 assured the OCC Barclays would do in respect of
15 their request to guarantee Lehman's obligations to
16 the OCC and the clearing house?

17 A Again, my best recollection is this
18 time it was effectively memorialized in an
19 agreement. I, myself, did not have direct
20 responsibility for the drafting of that agreement,
21 but the agreement reflected the terms of the
22 guarantee too.

23 Q And that was a guarantee with effect
24 from the close of the transaction, sir, not prior
25 to the transaction?

1 Confidential - K. Raisler
2 wanted comfort that they would not have to take
3 action themselves to either auction or liquidate
4 positions.

5 And so particularly rolling into
6 Friday, they wanted to make sure that there would
7 be performance on the options that expired, and
8 that there wouldn't be any shortfall come Monday.

9 Q As I understood your earlier
10 testimony, Mr. Raisler, OCC asked Barclays whether
11 or not they would guarantee Lehman's trading. Did
12 I understand your testimony correctly?

13 A Right. I think the word "trading" is
14 a little inaccurate at the end there. It would be
15 basically whether Barclays would be prepared to
16 guarantee Lehman's obligations to the exchange and
17 its clearing house in the event there were any
18 shortfalls, and it would involve both customer and
19 proprietary.

20 Q When was the OCC seeking to have that
21 guarantee in place with effect from?

22 A I believe sometime on Friday. I
23 believe the discussions preceded that, but I
24 believe sometime on Friday was what they were
25 looking for.

1 Confidential - K. Raisler

2 A I believe the request that was made
3 at the end of the week of the 15th was for the
4 opening of the 22nd, something quite similar to
5 what we talked about with the CME.

6 Q Right. As I understood your earlier
7 testimony, Mr. Raisler, you said that the CME
8 asked for a guarantee of trading over the
9 weekend --

10 A Right.

11 Q -- of the 20th and 21st; right?

12 MS. BLOOMER: Objection,
13 mischaracterizes his testimony.

14 A The -- what the CME was asking for
15 was, when they issued margin calls for the opening
16 on Monday, that if there were any shortfall, that
17 Barclays would be responsible for it.

18 I guess theoretically there could be
19 a margin call over the weekend, but since you
20 can't wire any money over the weekend, that would
21 be quite unusual. So I think it was much more for
22 the opening on Monday.

23 And I heard the OCC to be sort of
24 asking for the same thing.

25 Q Is the agreement that you referenced

Page 58	Page 59
<p>1 Confidential - K. Raisler</p> <p>2 that memorialized the understanding between the</p> <p>3 OCC and Barclays something that is known as a</p> <p>4 transfer and assumption agreement?</p> <p>5 A That is correct.</p> <p>6 Q You are familiar with that term?</p> <p>7 A I am, yes.</p> <p>8 Q Have you seen the document that</p> <p>9 memorializes the agreement between Barclays and</p> <p>10 the OCC?</p> <p>11 A I have.</p> <p>12 Q Were you involved in negotiating</p> <p>13 that, sir?</p> <p>14 A I was not. I was not specifically</p> <p>15 involved in the drafting of it. I did communicate</p> <p>16 to the various people the issues we discussed.</p> <p>17 Q Do you know who was negotiating the</p> <p>18 TA? My question is not specifically Barclays.</p> <p>19 A Right.</p> <p>20 Q But if you know who was negotiating</p> <p>21 on behalf of the OCC, Barclays or Lehman.</p> <p>22 A Well, certainly the same people on</p> <p>23 behalf of the OCC. I believe that Navin actually</p> <p>24 signed it.</p> <p>25 On behalf of Barclays, I believe it</p>	<p>1 Confidential - K. Raisler</p> <p>2 was handled more by Cleary, but I don't have a</p> <p>3 specific recollection of the details of that.</p> <p>4 And for Lehman, I am not really sure.</p> <p>5 Q You testified before the break,</p> <p>6 Mr. Raisler, that you understand that a business</p> <p>7 decision by Barclays to purchase the futures</p> <p>8 business was made around the 16th or 17th of</p> <p>9 September, 2008; is that correct?</p> <p>10 A Yes, that is my understanding.</p> <p>11 Q Do you know, sir, what information</p> <p>12 Barclays had about the nature and extent of</p> <p>13 customer positions and any associated collateral</p> <p>14 at the time it made that business decision?</p> <p>15 MS. BLOOMER: I am going to object</p> <p>16 and make sure the witness is clear he's not</p> <p>17 to disclose the substance of communications</p> <p>18 with Barclays.</p> <p>19 A I do know that the information was</p> <p>20 very imprecise. I also know that the positions</p> <p>21 were very large.</p> <p>22 Q Beyond that answer, are you able to</p> <p>23 provide any additional information in response to</p> <p>24 my question?</p> <p>25 MS. BLOOMER: Objection to form.</p>
Page 60	Page 61
<p>1 Confidential - K. Raisler</p> <p>2 A Well, I mean I have already testified</p> <p>3 that we knew to a large extent some of the</p> <p>4 exchanges on which the trading occurred, and on</p> <p>5 those exchanges proprietary versus customer, so,</p> <p>6 you know, we had more information, I could</p> <p>7 elaborate by the testimony I have given to this</p> <p>8 point.</p> <p>9 Q Other than the positions --</p> <p>10 withdrawn.</p> <p>11 Other than the exchanges on which</p> <p>12 these positions were held, do you have any</p> <p>13 information that -- about the information Barclays</p> <p>14 had at the time the business decision was made to</p> <p>15 purchase the futures business from Lehman as to</p> <p>16 the nature and extent of the customer positions</p> <p>17 and any associated collateral?</p> <p>18 MS. BLOOMER: Objection to form.</p> <p>19 And, Neil, I assume you are not expecting</p> <p>20 him to repeat everything he's already told</p> <p>21 you this morning.</p> <p>22 MR. OXFORD: No.</p> <p>23 MS. BLOOMER: Okay.</p> <p>24 A The question is a little hard to</p> <p>25 follow, so, I am going to ask you, if you could,</p>	<p>1 Confidential - K. Raisler</p> <p>2 to maybe break it down for me a little bit.</p> <p>3 Q Yes.</p> <p>4 A Okay.</p> <p>5 Q Leaving aside the identity of the</p> <p>6 exchanges on which positions were held, at the</p> <p>7 time Barclays made the business decision to</p> <p>8 acquire the futures business of Lehman, do you</p> <p>9 know what information Barclays had about the size</p> <p>10 of the customer positions and the size of the</p> <p>11 collateral that is associated with those</p> <p>12 positions?</p> <p>13 A I think at the highest level that</p> <p>14 information was known. Also, to the extent that</p> <p>15 at that time we were not aware from Lehman of any</p> <p>16 defaults on any of the exchanges on which they</p> <p>17 were trading, one could conclude that whatever the</p> <p>18 margin and collateral was, was adequate at that</p> <p>19 moment in time to meet the exchanges' demands.</p> <p>20 Q When you say, Mr. Raisler, at the</p> <p>21 highest level that information was known, are you</p> <p>22 able to be more precise about the -- the nature</p> <p>23 and extent of the customer positions, the size of</p> <p>24 those positions and the collateral associated with</p> <p>25 those positions?</p>

Confidential - K. Raisler

MS. BLOOMER: Objection to form.

A I think there were some general discussions about the types of customers that Lehman had. I think there was some general discussions about the size of the positions, although I never saw any breakdowns of that.

I think there were some general discussions about the amount, global amount of collateral, but I couldn't tell you how much of that was where at various points in time.

Q Same question with respect to the proprietary positions. At the time Barclays made the business decision to acquire Lehman's futures business, do you know what information Barclays had about the size of those proprietary positions and the associated collateral?

A My sense is that information was less precise than the customer positions, but also similarly high level.

Q Do you believe, Mr. Raisler, that Barclays was able to make a similar conclusion as to the one that you believe was possible in relation to the customer business, that there was sufficient collateral to secure those positions?

Confidential - K. Raisler

blurred, as I was seeking information and reporting back information about contacts with exchanges and contacts with the regulators.

Q Do you recall sitting in any other meetings in conference rooms with Lehman individuals?

A My recollection is that those kinds of meetings were sort of going on throughout the week, and that I would be in those meeting and out of those meetings during the course of the week.

Q Other than the individuals you identified towards the beginning of the deposition who were in the meeting on the 15th, sir, do you remember being in meetings about this, this topic, Barclays' acquisition of the Lehman's futures business, with any other individuals either on the Lehman's side or the Barclays side?

A That remained the lead cast. I know that there were a lot of other people in the room during the course of the week, but it's blurred and I don't remember distinctly other particular people.

Q You understand, Mr. Raisler, that the sale hearing in this matter took place in the

Confidential - K. Raisler

MS. BLOOMER: Objection to form.

A Yes, to be clear, I don't think I said that there was sufficient collateral to secure the positions. All I said was that at a point in time, which would be each day when the exchange marks the positions, that there had not been any defaults. The adequacy of the collateral to deal with what transpires or is going to transpire the next day would be unknown.

So all I would comment on is that in a retrospective way, open of business on the 16th, open of business on the 17th, there was from the exchange's position sufficient collateral to avoid a default, and I believe that would be true for the proprietary positions as well, to the extent we had a handle on it.

Q You described I think very well how one meeting that week rolled into another meeting which rolled into another meeting, sir. Do you have any specific recollections of meetings that you had participated in on the 16th of September, or conference calls that you had on that date?

A I think that after the meeting on the 16th, I think most of my work that week is

Confidential - K. Raisler

bankruptcy court in the bankruptcy court in Bowling Green on the 19th of September?

A I do understand that.

Q Were you present at that, sir?

A I was not.

Q Where were you on the 19th?

A Most likely in my office, doing most of this work by phone.

It's possible there was another meeting up at Lehman or Barclays that day as well.

Q Is it fair to say, Mr. Raisler, that from the time you were first involved on the evening of the 14th of September until the transaction closed on the 22nd, that you were working exclusively or almost exclusively on this matter?

A I would doubt that. I mean, that is, not generally, but I would say this would certainly have been my most significant engagement that week. I am sure not everything else I was doing stopped. So it would be substantial but not by any means all.

Q Did you continue to work on this matter through the weekend of the 20th and 21st of

Confidential - K. Raisler

September?

A I did.

Q Were you in your office or at
Lehman's office?

A I know there were a lot of phone
calls over the weekend. I don't recall any
specific meetings.

Q Did you have any conversations,
Mr. Raisler, with any regulators of Lehman's
futures business? And to give you the time frame
initially, my question is directed towards when
you were first engaged on the 14th through the
closing of the transaction on the 22nd.

A Yes. I mean I would have had
extensive discussions with the Commodity Futures
Trading Commission, which we call the CFTC,
throughout the week.

I also likely had conversations with
other regulators, but it would have been more
sporadic.

Q Which other regulators, sir?

A Probably the FSA in the U.K.
Potentially the Canadian regulators in Toronto.
I believe there were some

Confidential - K. Raisler

communications as well with the Japanese
regulators, although that would have been by
e-mail rather than by phone.

Q For what purpose, Mr. Raisler, were
you engaged in discussions with the CFTC?

A In two broad areas. One was to keep
them up-to-date on what was transpiring with
respect to the transaction, as they had their own
insecurities and their own responsibilities.

And two was to negotiate a bulk
transfer order that would allow the positions to
be moved from Lehman to Barclays in the event of a
Lehman bankruptcy. And in this regard, I am
referencing LBI.

Q Whom at the CFTC did you deal with
that week, sir?

A There would have been a number of
people, but the primary contact would have been an
individual named Bob Wasserman.

Q Do you remember the names of the
other individuals who you would have dealt with
that week?

A I would have spoken as well to -- and
I will let somebody else deal with the spelling of

Confidential - K. Raisler

this one -- Ananda Radhakrishnan, is the person to
whom I addressed a letter.

Q R-A-D-H-A-K-R-I-S-H-N-A-N.

A That sounds perfect. It certainly
would have been the way I would have spelled it if
I was called upon to do so.

John Lawton also in that division.

Likely some folks from the general
counsel's office. Perhaps also somebody from the
chairman's office.

Q Can you tell me, Mr. Raisler, what
the respective roles were of Mr. Wasserman,
Mr. Radhakrishnan, and Mr. Lawton?

A They all work in the same division.
Radhakrishnan is the head of the division of
clearing and intermediary oversight. Wasserman
and Lawton work for Radhakrishnan. Wasserman's
specialty is bankruptcy.

Q What were the insecurities that the
CFTC had?

A They wanted to be sure that there was
not going to be a default in the performance of
Lehman, either in its proprietary or in its
customer accounts, and they also, simply put, had

Confidential - K. Raisler

the same insecurities that the clearing houses
did.

Q You also mentioned that the CFTC had
its own responsibilities, sir. What did you mean
by that?

A As an agency responsible for
supervising the futures markets, they want to make
sure that the markets continue to operate
efficiently, and their concerns on -- with respect
to performance, are from their point of view
concerns that relate directly to them in addition
to relating to the exchanges and the clearing
houses.

Q Did you have any conversations, sir,
about what, if anything, the CFTC was doing to
satisfy itself that there would not be a default
relating to Lehman's proprietary customer
accounts?

A Basically the CFTC would get its
information from the exchanges, so, they would be
in constant contact with the exchanges to get
whatever information they could. The exchanges
have separate responsibilities, but the CFTC could
encourage them to take action if they thought it

Page 70	Page 71
<p>1 Confidential - K. Raisler</p> <p>2 was appropriate to do so.</p> <p>3 Q Do you know whether or not,</p> <p>4 Mr. Raisler, the CFTC had anybody on-site at</p> <p>5 Lehman's offices in the week or weeks running up</p> <p>6 to the closing of the transaction?</p> <p>7 A I believe they had some people come</p> <p>8 in at some point that week, but I don't have a</p> <p>9 good recollection of it.</p> <p>10 Q By that week, do you mean the week</p> <p>11 beginning the 15th of September?</p> <p>12 A Correct.</p> <p>13 Q Do you have any understanding of the</p> <p>14 purpose for which the CFTC's employees were</p> <p>15 present on-site at Lehman that week?</p> <p>16 A They would as a routine matter want</p> <p>17 to look at books and records and make sure that</p> <p>18 things were in order and that they could get a</p> <p>19 handle on what was going on. I don't recall them</p> <p>20 doing that, but it certainly would not have been</p> <p>21 illogical for them to have been on-site.</p> <p>22 Q When did you first speak to anyone at</p> <p>23 the CFTC in connection with this matter?</p> <p>24 A Probably Monday the 15th, the latest</p> <p>25 Tuesday the 16th.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Do you remember whether you reached</p> <p>3 out to them or they reached out to you?</p> <p>4 A I probably most likely would have</p> <p>5 reached out to them, because they wouldn't have</p> <p>6 most likely known to have reached out to me.</p> <p>7 Q Do you remember who was reached out</p> <p>8 to? Was it Mr. Wasserman?</p> <p>9 A It probably would have been Ananda,</p> <p>10 because I wouldn't have assumed who he would have</p> <p>11 assigned responsibilities to.</p> <p>12 Q Can you tell me as best you can what</p> <p>13 you remember about that conversation with Ananda.</p> <p>14 A My best recollection, and it's not</p> <p>15 very precise, would be that I would have called</p> <p>16 him, told him that we had been engaged by Barclays</p> <p>17 to assist in this possible transaction, and that</p> <p>18 my responsibility was to keep them informed to the</p> <p>19 extent I had information, and that if they needed</p> <p>20 anything from Barclays, to contact me, and that</p> <p>21 one of the things we would be looking at if the</p> <p>22 deal went forward was some kind of a blessing from</p> <p>23 the Commission endorsing the transfer, so I would</p> <p>24 be back to him to discuss that.</p> <p>25 Q And do you recall, sir, what the</p>
Page 72	Page 73
<p>1 Confidential - K. Raisler</p> <p>2 response was from the CFTC in -- in response to</p> <p>3 that overture?</p> <p>4 A I am sure it was the usual formal</p> <p>5 appreciation of the contact, and the, the</p> <p>6 indication that we would be sure to have further</p> <p>7 conversations.</p> <p>8 Q What is the next contact you recall</p> <p>9 with the CFTC?</p> <p>10 A Again, there is a blurring here, but</p> <p>11 I probably would have had a dozen or more contacts</p> <p>12 with them during the course of the week.</p> <p>13 Q Were those contacts primarily with</p> <p>14 Mr. Wasserman?</p> <p>15 A Yes, although oftentimes there were</p> <p>16 others on the phone with him.</p> <p>17 Q And what was the purpose,</p> <p>18 Mr. Raisler, of your continuing contact with the</p> <p>19 CFTC that week? Was that to update them on the</p> <p>20 transaction as it progressed, to your</p> <p>21 understanding?</p> <p>22 A Twofold, as I indicated earlier. One</p> <p>23 is to update on the transaction, and to basically</p> <p>24 touch base about that, and the second was to</p> <p>25 discuss with them the bulk transfer order.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q You said you also had conversations</p> <p>3 you believe with the FSA in the U.K.?</p> <p>4 A Correct.</p> <p>5 Q Can you tell me why that was?</p> <p>6 A I think basically the same thing. To</p> <p>7 the extent that Lehman had positions in the U.K.</p> <p>8 that potentially were going to be taken over by</p> <p>9 Barclays, I just wanted to make sure that they</p> <p>10 knew that I was the point person for</p> <p>11 communications.</p> <p>12 I must say, as I am sitting here</p> <p>13 today, I don't remember having detailed or</p> <p>14 extensive conversations with them. It might have</p> <p>15 been just one or two quick calls.</p> <p>16 Q Do you remember who at the FSA you</p> <p>17 spoke to?</p> <p>18 A It might have been Gavin Hill. I am</p> <p>19 not sure.</p> <p>20 Q To your knowledge, sir, did Barclays</p> <p>21 negotiate a bulk transfer order or agreement with</p> <p>22 the FSA as it did with the CFTC?</p> <p>23 A No, we did not. There was no</p> <p>24 requirement for that in the U.K.</p> <p>25 Q Mr. Raisler, do you know what</p>

Page 74	Page 75
<p>1 Confidential - K. Raisler</p> <p>2 happened to Lehman's positions in the U.K.? Were</p> <p>3 they actually transferred to Barclays?</p> <p>4 A I am not sure.</p> <p>5 MR. LACY: Let me object to the form</p> <p>6 of the question.</p> <p>7 A I am not sure. I don't -- as I sit</p> <p>8 here today, I don't know.</p> <p>9 Q The positions that Lehman had in the</p> <p>10 U.K., do you know whether they were cleared</p> <p>11 through a Lehman affiliate?</p> <p>12 A My recollection is they would have</p> <p>13 been cleared through a Lehman affiliate, yes.</p> <p>14 Q Was that affiliate LBIE?</p> <p>15 A That is my best recollection.</p> <p>16 Q Do you have any recollection of any</p> <p>17 contact with a Canadian regulator? I think you</p> <p>18 said you --</p> <p>19 A Right.</p> <p>20 Q -- potentially had contact.</p> <p>21 A Here again, it's somewhat vague. I</p> <p>22 believe I might have. I don't remember who I</p> <p>23 would have reached out to there. That is quite</p> <p>24 vague.</p> <p>25 Q What is the name of the Japanese</p>	<p>1 Confidential - K. Raisler</p> <p>2 regulator that you reached out to by e-mail?</p> <p>3 A It would have been the MOF, Ministry</p> <p>4 of Finance.</p> <p>5 Q And for what purpose were you</p> <p>6 reaching out to the Ministry of Finance?</p> <p>7 A Same purpose. It is possible that</p> <p>8 rather than reaching out to them directly, we</p> <p>9 contacted the CFTC and asked the CFTC to reach out</p> <p>10 to them, because I don't recall any specific</p> <p>11 e-mails. But I certainly, I certainly did not</p> <p>12 speak to them. That I would have remembered.</p> <p>13 Q Turning to your declaration for a</p> <p>14 moment, Mr. Raisler, that is Exhibit 658-A, if you</p> <p>15 turn to the second page, there is a sentence that</p> <p>16 begins, "I recall," in the first line.</p> <p>17 Do you see that?</p> <p>18 A Right.</p> <p>19 Q You write, "I recall that during</p> <p>20 those meetings and telephone conferences, Barclays</p> <p>21 was unable to get detailed information concerning</p> <p>22 LBI's futures business for a number of reasons,</p> <p>23 both technical and practical."</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>
Page 76	Page 77
<p>1 Confidential - K. Raisler</p> <p>2 Q I think we may have covered some of</p> <p>3 this already. I am not trying to retread ground</p> <p>4 we have already gone through, but I want to make</p> <p>5 sure that I have the -- your complete</p> <p>6 recollection.</p> <p>7 What did you mean by the technical</p> <p>8 reasons that you referenced in your declaration?</p> <p>9 A I think that the systems information</p> <p>10 was not readily available, particularly where it</p> <p>11 was trading through affiliates. That we were</p> <p>12 not -- there weren't any -- there were requests</p> <p>13 for it, but there weren't any reports about</p> <p>14 positions that were made available.</p> <p>15 So, I think that was sort of a</p> <p>16 systems breakdown problem.</p> <p>17 Q Do you know, Mr. Raisler, who at</p> <p>18 Barclays asked for this information and who at</p> <p>19 Lehman they asked?</p> <p>20 A I believe these were general</p> <p>21 questions raised at these meeting we were having</p> <p>22 with the group around the table to get position</p> <p>23 reports and the like.</p> <p>24 Q You also reference practical reasons</p> <p>25 that Barclays was unable to get detailed</p>	<p>1 Confidential - K. Raisler</p> <p>2 information about the futures business. What did</p> <p>3 you mean by that?</p> <p>4 A I guess broadly stated, the market</p> <p>5 was in substantial turmoil during that time</p> <p>6 period. Positions were changing relatively</p> <p>7 rapidly. Particularly in the foreign markets,</p> <p>8 there were rumors that positions were being taken</p> <p>9 over, liquidated.</p> <p>10 So, in a practical sense, there was</p> <p>11 just chaos and resource constraints that were</p> <p>12 driving the lack of information flow.</p> <p>13 Q You go on in the next sentence to</p> <p>14 describe the obstacle to information sharing that</p> <p>15 stands out most in your mind as the problems with</p> <p>16 the LBI books and records.</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q You then go on to say in the next</p> <p>20 sentence, "My recollection is that due to these</p> <p>21 and other issues, the discussions during these</p> <p>22 meetings and calls were had at a very high level,</p> <p>23 all relating generally to LBI's proprietary</p> <p>24 positions and collateral, the customer segregated</p> <p>25 and secured accounts through which LBI conducted</p>

Page 78	Page 79
<p>1 Confidential - K. Raisler</p> <p>2 that business, and the customer accounts that</p> <p>3 related to that business."</p> <p>4 Do you see that?</p> <p>5 A Yes, I do.</p> <p>6 Q At the start of that sentence, you</p> <p>7 refer to other issues. What did you mean by that,</p> <p>8 sir?</p> <p>9 A Well, depending on what we mean by</p> <p>10 technical and practical, there were some</p> <p>11 situations where information was just not</p> <p>12 delivered, and an example of that is with this VIX</p> <p>13 position on the CFE that we didn't learn about</p> <p>14 until Saturday, the 20th, even though it had been</p> <p>15 on the books the entire week.</p> <p>16 I mean, I don't believe -- just to be</p> <p>17 clear, I don't believe anybody was withholding</p> <p>18 information from us per se, but information was</p> <p>19 not getting to us, and this was a proprietary</p> <p>20 position and a relatively significant one that was</p> <p>21 just not disclosed.</p> <p>22 Q Were you referring to anything else,</p> <p>23 sir, when you referenced the other issues in your</p> <p>24 declaration?</p> <p>25 MS. BLOOMER: Objection to form.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I think there were other issues with</p> <p>3 foreign markets of just not -- information just</p> <p>4 not flowing in terms of where they had positions</p> <p>5 and accounts, which may go beyond technical and</p> <p>6 practical.</p> <p>7 Q You reference in that same sentence,</p> <p>8 sir, the customer segregated and secured accounts.</p> <p>9 Can you tell me, please, what those are?</p> <p>10 A Customers that trade in the U.S.</p> <p>11 futures markets have collateral that they post.</p> <p>12 That collateral is held pursuant to CFTC</p> <p>13 regulation in a segregated account, segregated</p> <p>14 from the proprietary assets of the futures</p> <p>15 program.</p> <p>16 If a customer wishes to trade in a</p> <p>17 non-U.S. futures market through a U.S. broker,</p> <p>18 generally, the funds will be held in a secured</p> <p>19 account, which is a separate account from the</p> <p>20 segregated account, but an account that also has</p> <p>21 significant protection from the liabilities of the</p> <p>22 futures broker or its affiliates.</p> <p>23 Q Do I understand from your answer,</p> <p>24 Mr. Raisler, that there is a difference in the</p> <p>25 degree of protection from liabilities of the</p>
Page 80	Page 81
<p>1 Confidential - K. Raisler</p> <p>2 broker for the customer collateral in the</p> <p>3 segregated and the secured accounts?</p> <p>4 A This has never really been tested in</p> <p>5 a court situation, but I think most people would</p> <p>6 agree that both of them are entitled to</p> <p>7 substantial protection, but that segregated</p> <p>8 positions are probably a bit more protected than</p> <p>9 secured positions.</p> <p>10 Q And can you explain a little more</p> <p>11 with respect, firstly, to the segregated and then</p> <p>12 the secured accounts, how that, how that actually</p> <p>13 works? If a customer of Lehman provides</p> <p>14 collateral to Lehman, where is that held?</p> <p>15 A There are really two --</p> <p>16 MS. BLOOMER: Objection, lacks</p> <p>17 foundation.</p> <p>18 A There are two locations for the</p> <p>19 holding of customer funds. One would be at a bank</p> <p>20 account of the futures broker, labeled customer</p> <p>21 segregated account. It would be an aggregate</p> <p>22 account holding the segregated funds of all of the</p> <p>23 customers of that broker. And the bank holding</p> <p>24 those segregated funds would pledge to the broker</p> <p>25 that it was holding the accounts in segregation</p>	<p>1 Confidential - K. Raisler</p> <p>2 pursuant to CFTC rules and could not use any of</p> <p>3 that money to meet any of the obligations of the</p> <p>4 futures broker or its affiliates.</p> <p>5 The second location would be in a</p> <p>6 customer segregated account in the name of Lehman,</p> <p>7 in this case, held at the clearing house.</p> <p>8 Q And would the customer segregated</p> <p>9 account, Mr. Raisler, have the same protection by</p> <p>10 way of a pledge as the bank account would?</p> <p>11 A Yes. And in fact, it wouldn't be</p> <p>12 surprising that the clearing house has a clearing</p> <p>13 bank where it keeps the money, and so the same</p> <p>14 basic representations apply.</p> <p>15 Q I see references to 30.7 accounts.</p> <p>16 A 30.7 refers to the secured, not the</p> <p>17 segregated account regime.</p> <p>18 Q And that is for non-U.S. futures</p> <p>19 markets; correct?</p> <p>20 A Correct.</p> <p>21 Q Is there a similar designation or</p> <p>22 number that refers to the segregated accounts?</p> <p>23 A Generally it's referred to as either</p> <p>24 4d, four small d, which is the statutory</p> <p>25 provision, or 1.20, one point two zero, who is the</p>

Page 82	Page 83
<p>1 Confidential - K. Raisler 2 regulatory provision. 3 Q Taking Lehman's as our example, would 4 Lehman own the assets in the -- either the bank 5 account or the customer segregated account held at 6 the clearing house? 7 MS. BLOOMER: Objection, vague as to 8 time frame, and lacks foundation. 9 A I think actually absolutely the 10 opposite. These would be recognized as assets to 11 secure the obligations of the customers, and they 12 would not be the assets of Lehman Brothers in your 13 example. 14 I guess it's necessary to put a small 15 caveat on that, which is, as we discussed 16 earlier -- I don't want to rehash what we 17 discussed earlier, but Lehman and/or a futures 18 broker typically would have some of its own assets 19 in the segregated account as a buffer to avoid 20 concerns at the clearing house that intraday or 21 daily margins can't be met. 22 Q And are you making a distinction as 23 to who owns the buffer assets, as you have 24 described them, and the assets that are held to 25 secure the obligations of customers?</p>	<p>1 Confidential - K. Raisler 2 MS. BLOOMER: Objection to the form 3 of that question. 4 A Correct. If there were to be a 5 default, all of those assets would be deemed to be 6 part of the customer estate and would be used by 7 the customers before the excess, if there were 8 any, were to be returned to the broker. 9 However, if there were not to be a 10 default, and the business were to be wound down, 11 hypothetically, that buffer money could be 12 returned to the broker. 13 Q I think I got your last answer, and I 14 appreciate that. I just want to make sure that we 15 are not talking past each other. 16 The assets of the broker dealer, that 17 the broker dealer puts into such a segregated 18 account as a buffer for intraday trading, as you 19 describe, would you consider those to be the 20 assets of the broker dealer rather than of 21 customers? 22 MS. BLOOMER: Objection to the form 23 of the question. 24 A Two comments there. One is, it's not 25 just for intraday. It would just generally be to</p>
Page 84	Page 85
<p>1 Confidential - K. Raisler 2 complete margin calls as they occur. 3 As I indicated, it's a bit of a 4 hybrid. If there were to be a default, that money 5 would be used by the exchange or the CFTC 6 administering that default as an asset for the 7 benefit exclusively of the customers, and only if 8 there were, if there was some money left over, 9 could it be potentially returned, but if there 10 were not a default, and if it were just to be sort 11 of shut down the business, buffer money might be 12 identified as separate monies that would go back 13 to -- assuming everything else gets paid out, that 14 would go back to the FCM. 15 Q I think I understand that. Thank 16 you. 17 Is it correct then to say that to 18 your understanding, sir, the -- someone other than 19 the broker dealer, in this case Lehman, has an 20 interest in the assets in the segregated account? 21 MS. BLOOMER: Objection to form. Did 22 you say other than the broker dealer, in 23 this case Lehman? 24 MR. OXFORD: Yes. 25 MS. BLOOMER: Objection to the form</p>	<p>1 Confidential - K. Raisler 2 of the question. 3 A Just for clarity, since this probably 4 comes up a number of times, your reference to the 5 broker dealer I don't object to except for the 6 fact that it's both a joint broker dealer and a 7 futures commission merchant, and it's only in its 8 capacity as a broker dealer that this issue comes 9 up. 10 But I think the answer to your 11 question is yes. 12 Q And is it a particular exchange or 13 clearing organization that has an interest in the 14 segregated account? 15 A It's the customers as a whole, as a 16 group in aggregate form that have an interest in 17 that account. 18 Q Would, for example, the CME be able 19 to draw down from a customer seg account? 20 MR. LACY: Perhaps -- I suppose it's 21 an objection. But the two of you are -- I 22 am not sure you are both using the same 23 understanding of the word "interest." 24 Perhaps if the question could be more 25 detailed about what an interest means.</p>

Page 86

Confidential - K. Raisler

Q By interest, I mean any rights to.

A The clearing house and the exchange have no rights to any assets except -- well, to any assets period.

In administering a default, they would take over positions and use assets in a segregated account to meet market-related demands, but it shouldn't be implied that the clearing house can put money in its pocket.

Q Right. I think I understand, then. Thank you.

So, other than in the event of a default by the FCM, the clearing house has no ability to draw down money for variation margin or initial margin, for example, from a customer seg account; is that correct?

MS. BLOOMER: Objection to form.

A No, that is not correct. I mean I think, we have to go back a little bit to first principles. Basically the segregated account is there to meet the daily requirements of the customers as a whole to the clearing house, and so the clearing house routinely will be drawing down to meet the market-based obligations of the

Page 88

Confidential - K. Raisler

take over the accounts and liquidate them themselves.

Q Is there any requirement that an FCM maintain a buffer or an excess in a segregated account, or is it simply common practice?

A It -- it's common practice. The legal requirement for the FCM is it has to maintain net capital. That net capital is part of its capital structure, not necessarily money that it puts into a segregated account. The net capital requirements are a percentage of the funds in segregation.

Q So would it be accurate to say that an FCM could withdraw any excess in the segregated account at any time?

A I think it could withdraw money that it had put up as its buffer, provided the exchange did not have any insecurity, in which case the exchange would not let them do that.

And I'm sorry, when I refer to exchange there, I may be referring to the clearing house. The two are interchangeable when you are dealing with something like the CME.

Q Would the exchange or clearing house,

Page 87

Confidential - K. Raisler

customers as a whole, and that will happen daily.

Q And does the clearing house have a right to draw down an unlimited amount from the segregated account?

A To the extent that it's needed to meet obligations of the clearing house, yes.

Q You said obligations of the clearing house. Did you mean obligations of customers?

A Obligations of the FCM's customers to the clearing house.

And I think it's also important to recognize that there is a default scenario which we have been speaking to, but there is also the ability of the exchange, if it has insecurity, to take action as well.

Q And what would that action be, sir?

A That action would be similar to the action that they took with respect to the proprietary positions at the CME. They could direct some positions to be moved to another futures broker. They would need the CFTC to assist them to make that happen.

Or they could direct that the trading be for liquidation only, or they could literally

Page 89

Confidential - K. Raisler

Mr. Raisler, have a right to draw down money on a daily or perhaps intraday basis not only from the segregated account that is held at the clearing house, but if there are separate bank accounts that are held by the FCM, which is I think the first example you gave, would the clearing house also have a right to draw down monies from that account?

A Yes.

Q Turning to the world then of secured accounts, which I think you described as non-U.S. futures markets cleared through a U.S. broker.

A Correct.

Q Can you tell me, sir, whether or not the rights of the clearing brokers or exchanges ex-U.S. are any different than the rights of the exchanges or clearing houses in the U.S. under the segregated accounts?

MR. LACY: Can I just stop for a moment and say that you are using someone who is supposed to be a fact witness basically to give you a lecture on commodities regulations.

All of this stuff is available in the

Page 90	Page 91
<p>1 Confidential - K. Raisler</p> <p>2 rules for you to look up yourselves, so I</p> <p>3 hope this will not go on all day, and I</p> <p>4 don't think it's fair to the witness</p> <p>5 basically to make him take the day off of</p> <p>6 work for his other clients to explain this</p> <p>7 all to you.</p> <p>8 Obviously we are happy to go on for a</p> <p>9 while, but this should not be the day's</p> <p>10 work.</p> <p>11 A The -- in structure and concept, the</p> <p>12 answer should be yes. However, each foreign</p> <p>13 clearing house has its own rules, and therefore,</p> <p>14 each one of these secured amount and secured</p> <p>15 account situations would have to be evaluated</p> <p>16 based on the rules of each of the markets.</p> <p>17 Q To your knowledge, Mr. Raisler, did</p> <p>18 Lehman as an FCM calculate the amount of money in</p> <p>19 its customer segregated and secured accounts on a</p> <p>20 daily basis?</p> <p>21 MS. BLOOMER: Objection, lack of</p> <p>22 foundation.</p> <p>23 MR. LACY: Object to the form as</p> <p>24 well.</p> <p>25 Q And my question is specifically</p>	<p>1 Confidential - K. Raisler</p> <p>2 directed towards the time period when you were</p> <p>3 involved, sir, from the 15th onwards.</p> <p>4 A It would be effectively required to</p> <p>5 do so by regulation.</p> <p>6 Q And would the calculation that Lehman</p> <p>7 performed that week show whether or not there was</p> <p>8 any excess in the segregated and secured accounts</p> <p>9 for customers over and above that which was</p> <p>10 required under regulation to be held?</p> <p>11 MS. BLOOMER: Objection to the form.</p> <p>12 It lacks foundation.</p> <p>13 A I think it's important to just stop a</p> <p>14 moment here and talk about the word "excess," and</p> <p>15 particularly talk about it in the context of what</p> <p>16 was going on in the week of September 15th. Given</p> <p>17 the amount of volatility in the market, not just</p> <p>18 for Lehman, but for any futures broker that week,</p> <p>19 you wouldn't -- you would know at a snapshot in</p> <p>20 time, that is when the end of day, which as we</p> <p>21 indicated these markets trade 24 hours, but there</p> <p>22 is an arbitrary end of day calculation done where</p> <p>23 the position is marked to market, I believe</p> <p>24 typically at 3:30 or 4 p.m.</p> <p>25 By the time you have run that</p>
Page 92	Page 93
<p>1 Confidential - K. Raisler</p> <p>2 calculation, which would be sometime thereafter,</p> <p>3 usually several hours, you wouldn't know at that</p> <p>4 point whether you were actually in line and know</p> <p>5 where you stood with respect to excess versus</p> <p>6 required capital to meet obligations.</p> <p>7 So, theoretically I would answer your</p> <p>8 question yes, but practically, particularly in a</p> <p>9 volatile market, the answer is no.</p> <p>10 Q Is it your understanding,</p> <p>11 Mr. Raisler, that Lehman was required to perform</p> <p>12 segregated and secured calculations on a daily</p> <p>13 basis?</p> <p>14 MS. BLOOMER: Objection to the form,</p> <p>15 foundation.</p> <p>16 A That is correct, yes.</p> <p>17 Q And they were required to perform</p> <p>18 those calculations by a particular time each day;</p> <p>19 is that correct?</p> <p>20 A Not really.</p> <p>21 MS. BLOOMER: I am just going to --</p> <p>22 before you answer, I'm going to object, and</p> <p>23 I am just going to -- are you asking for his</p> <p>24 legal opinion on what Lehman was required to</p> <p>25 do?</p>	<p>1 Confidential - K. Raisler</p> <p>2 MR. OXFORD: I'm asking if he knows.</p> <p>3 MS. BLOOMER: You are asking him what</p> <p>4 is required. Do you mean legally required</p> <p>5 under a regulation? Is that what you are</p> <p>6 asking him?</p> <p>7 MR. OXFORD: I'm asking him if he</p> <p>8 knows the answer to the question.</p> <p>9 A To my knowledge, there was no</p> <p>10 specific time of day required.</p> <p>11 Q Do you know whether or not the</p> <p>12 segregated and secured calculations were</p> <p>13 scrutinized during the week of the 15th, sir, by</p> <p>14 the CFTC?</p> <p>15 A I do not know.</p> <p>16 Q Did you ever see any customer</p> <p>17 segregated and secured account calculations as</p> <p>18 part of the investigation or the due diligence,</p> <p>19 however you describe it, as part of your work</p> <p>20 prior to the closing of the transaction on the</p> <p>21 22nd?</p> <p>22 A I did not.</p> <p>23 Q Did you ask to see any segregated,</p> <p>24 customer segregated and secured calculations?</p> <p>25 A I don't recall doing so.</p>

Page 94	Page 95
<p>1 Confidential - K. Raisler</p> <p>2 Q Do you know whether or not anybody at</p> <p>3 Barclays asked for that information?</p> <p>4 MS. BLOOMER: Objection to form and</p> <p>5 foundation.</p> <p>6 A I believe that was one of the topics</p> <p>7 that was discussed in the meetings early in the</p> <p>8 week.</p> <p>9 Q Do you know whether or not that the</p> <p>10 results of the seg and secured calculations were</p> <p>11 provided to Barclays at any time during the week</p> <p>12 of the 15th?</p> <p>13 A I believe some information was</p> <p>14 provided. My recollection is it was at a high</p> <p>15 level.</p> <p>16 Q Can you be more specific about what</p> <p>17 you mean by a high level?</p> <p>18 A I believe that aggregate numbers were</p> <p>19 provided.</p> <p>20 Q And what information would be</p> <p>21 included in those aggregate numbers, again</p> <p>22 specifically with respect to the customer</p> <p>23 segregated and secured accounts of Lehman in the</p> <p>24 week of the 15th?</p> <p>25 A My recollection is some numbers were</p>	<p>1 Confidential - K. Raisler</p> <p>2 thrown out as to what the amount of seg and the</p> <p>3 amount of secured were at various times, but they</p> <p>4 were always going to be out of date by the time we</p> <p>5 received them.</p> <p>6 Q Why would they be out of date, sir?</p> <p>7 A Because whenever they reported them,</p> <p>8 they would be several hours at a minimum after the</p> <p>9 actual mark to market times, and the markets were</p> <p>10 moving rapidly, so they were retrospectively</p> <p>11 reliable, but current time not.</p> <p>12 Q To your understanding, sir, did</p> <p>13 Barclays have information about the seg and</p> <p>14 secured calculations at more than one point over</p> <p>15 the week of the 15th?</p> <p>16 MS. BLOOMER: I am going to object to</p> <p>17 the question as to vagueness of the term</p> <p>18 calculation. Just so you are not talking</p> <p>19 past each other, are you asking him about</p> <p>20 the calculation meaning the requirement or</p> <p>21 the actual balance in the accounts at any</p> <p>22 given point? I think there may be some</p> <p>23 confusion.</p> <p>24 MR. OXFORD: That is a fair</p> <p>25 objection.</p>
Page 96	Page 97
<p>1 Confidential - K. Raisler</p> <p>2 Q My questions, Mr. Raisler, are</p> <p>3 directed to trying to find out what information,</p> <p>4 if any, Barclays had about, on the one hand, the</p> <p>5 required amount that Barclays -- sorry, Lehman was</p> <p>6 obligated to have in the customer segregated and</p> <p>7 secured accounts, and how much Lehman actually had</p> <p>8 locked up compared with that obligation.</p> <p>9 A My recollection, and it is not very</p> <p>10 precise, is that the numbers that were thrown</p> <p>11 around were the total balances, not any breakdown</p> <p>12 about the required versus other amounts.</p> <p>13 Q Do you know whether or not Barclays</p> <p>14 knew at any time prior to the closing of the</p> <p>15 transaction, sir, whether or not Lehman had locked</p> <p>16 up in its customer segregated and secured accounts</p> <p>17 sufficient assets to meet its obligations to those</p> <p>18 customers?</p> <p>19 MR. LACY: I am going to object to</p> <p>20 the form of that question.</p> <p>21 A I think I testified about this</p> <p>22 earlier. All I could say is that up until the</p> <p>23 time of the closing, there had not been a default,</p> <p>24 but that doesn't tell you whether -- you know,</p> <p>25 what would be adequate under the circumstances,</p>	<p>1 Confidential - K. Raisler</p> <p>2 because of the market's rapid changing of</p> <p>3 positions.</p> <p>4 Q My question is not directed towards</p> <p>5 any defaults post closing, Mr. Raisler. My</p> <p>6 question is whether or not Barclays knew whether</p> <p>7 or not Lehman was in compliance with its</p> <p>8 obligations under the CFTC regulations with</p> <p>9 respect to the amount of collateral it had locked</p> <p>10 up in its customer segregated and secured</p> <p>11 accounts.</p> <p>12 MS. BLOOMER: Objection.</p> <p>13 MR. LACY: Object to the form of the</p> <p>14 question.</p> <p>15 A It was my understanding during the</p> <p>16 course of the week of the 15th that there were, in</p> <p>17 total, in the segregated and secured accounts</p> <p>18 monies sufficient to meet the margin calls that</p> <p>19 the exchanges had imposed on those accounts.</p> <p>20 That does not specifically answer</p> <p>21 your question as to whether there was adequate</p> <p>22 collateral in those accounts.</p> <p>23 Q Did you ask anyone at Lehman whether</p> <p>24 or not there was adequate collateral in those</p> <p>25 customer segregated and secured accounts to meet,</p>

Page 98	Page 99
<p>1 Confidential - K. Raisler</p> <p>2 first of all, the requirement under the CFTC</p> <p>3 regulations?</p> <p>4 A See, no one could know that. That is</p> <p>5 the sort of -- I mean absent -- given the</p> <p>6 volatility of the market and the uncertainty of</p> <p>7 the market, that is always going to be an unknown,</p> <p>8 more dramatically unknown when the markets are</p> <p>9 moving rapidly. In this context it was made</p> <p>10 emphatically unknown because we weren't getting</p> <p>11 complete information about positions.</p> <p>12 MR. OXFORD: Do we want to take a</p> <p>13 five-minute break?</p> <p>14 THE WITNESS: Sure.</p> <p>15 (Recess taken.)</p> <p>16 (Exhibit 659-A marked for</p> <p>17 identification as of this date.)</p> <p>18 MR. OXFORD: Back on.</p> <p>19 Q Mr. Raisler, I have handed you what I</p> <p>20 have marked as Exhibit 659-A. If you could take a</p> <p>21 moment to review that and let me know when you are</p> <p>22 done, please.</p> <p>23 In the meantime, I will just identify</p> <p>24 that for the record as an e-mail with the Bates</p> <p>25 number BCISC 00009676, and the document goes</p>	<p>1 Confidential - K. Raisler</p> <p>2 through 9688.</p> <p>3 MR. LACY: Can you make out the</p> <p>4 highlighting?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MS. BLOOMER: This highlighting?</p> <p>7 MR. LACY: Just so we are all on the</p> <p>8 same page, the first attachment to this is a</p> <p>9 comparison with highlighted material, and</p> <p>10 it's extraordinarily difficult to see what</p> <p>11 is highlighted on the copy.</p> <p>12 THE WITNESS: I am not even sure that</p> <p>13 is the case, but --</p> <p>14 MR. LACY: Well, the description on</p> <p>15 the attachments.</p> <p>16 THE WITNESS: The third one.</p> <p>17 MR. LACY: Oh, the third?</p> <p>18 THE WITNESS: Yes.</p> <p>19 MR. LACY: I'm sorry. Why do we have</p> <p>20 three attachments?</p> <p>21 THE WITNESS: One is a Word version,</p> <p>22 so I am mystified by that, too.</p> <p>23 MR. LACY: Got it.</p> <p>24 MS. BLOOMER: Is that supposed to be</p> <p>25 highlighted or not?</p>
Page 100	Page 101
<p>1 Confidential - K. Raisler</p> <p>2 MR. LACY: Apparently it's not. That</p> <p>3 is apparently some sort of copying defect.</p> <p>4 THE WITNESS: Can we go off the</p> <p>5 record for a moment?</p> <p>6 MR. OXFORD: Sure.</p> <p>7 (Discussion held off the record.)</p> <p>8 MR. LACY: Exhibit 659-A was a copy</p> <p>9 apparently of the document that was</p> <p>10 produced. The witness pointed out that the</p> <p>11 third attachment is supposed to be a</p> <p>12 blackline. It's not a blackline of the same</p> <p>13 document of which the first two attachments</p> <p>14 are copies and which would suggest that</p> <p>15 there appears to be a mistake in the</p> <p>16 production, which I will clear up.</p> <p>17 MR. OXFORD: Thank you.</p> <p>18 Q Mr. Raisler, with that on the record,</p> <p>19 my questions are going to focus primarily on the</p> <p>20 first attachment to Exhibit 659-A.</p> <p>21 Do you recognize that document, sir?</p> <p>22 A Yes, I do.</p> <p>23 Q Can you tell me what it is, please?</p> <p>24 A This is the request letter to the</p> <p>25 CFTC that I previously described as the request</p>	<p>1 Confidential - K. Raisler</p> <p>2 for a bulk transfer order.</p> <p>3 Q You will see, turning to the e-mail</p> <p>4 that sends this to the CFTC, it appears to be sent</p> <p>5 by your partner, David Gilberg, and on Friday,</p> <p>6 September 19th, just after 10 a.m.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q And sent to Paul Wasserman, John</p> <p>10 Lawton, and there is another name that I don't</p> <p>11 think you mentioned before. Is that Natalie</p> <p>12 Markman?</p> <p>13 A Yes, it is.</p> <p>14 Q Did you have any conversations with</p> <p>15 Ms. Markman about the transfer of futures business</p> <p>16 to Barclays from Lehman?</p> <p>17 A Yes, we did.</p> <p>18 Q Can you tell me what those</p> <p>19 conversations were, please?</p> <p>20 A They would be similar to the</p> <p>21 conversations we had with the other people we have</p> <p>22 identified. The only specifics is that I believe</p> <p>23 working on this letter we had conversations back</p> <p>24 and forth with Natalie on suggested changes or</p> <p>25 clarifications.</p>

Page 102	Page 103
<p>1 Confidential - K. Raisler</p> <p>2 Q Did you or anyone else at Sullivan &</p> <p>3 Cromwell send drafts of this letter to the CFTC?</p> <p>4 A Yes.</p> <p>5 Q Sitting here today, do you have any</p> <p>6 recollection of how many drafts were sent?</p> <p>7 A I'm sure more than one, but probably</p> <p>8 only a couple.</p> <p>9 Q As best you can recall, sir, when was</p> <p>10 the first draft sent?</p> <p>11 A I believe probably the prior day. I</p> <p>12 believe all of this was negotiated in about a</p> <p>13 24-hour or so time period.</p> <p>14 Q The negotiation of this letter with</p> <p>15 the CFTC, did it take place with the three</p> <p>16 individuals who are the recipients of the e-mail</p> <p>17 that is Exhibit 659-A?</p> <p>18 A Yes.</p> <p>19 Q Were there others at the CFTC who</p> <p>20 were also involved?</p> <p>21 A Ananda Radhakrishnan was also</p> <p>22 involved.</p> <p>23 Q If you could turn to your letter,</p> <p>24 sir, that is the first attachment to the e-mail,</p> <p>25 and you will see if you look on the third page, it</p>	<p>1 Confidential - K. Raisler</p> <p>2 appears to be an executed copy.</p> <p>3 A I believe that is a fourth page, but</p> <p>4 it is signed, yes.</p> <p>5 Q I am sorry, I thought I said fourth</p> <p>6 page. My mistake.</p> <p>7 Is that your signature, sir, or did</p> <p>8 someone sign on your behalf?</p> <p>9 A That is not my signature. That looks</p> <p>10 like David Gilberg's signature.</p> <p>11 Q Signing on your behalf?</p> <p>12 A That's correct.</p> <p>13 Q Did you authorize Mr. Gilberg to sign</p> <p>14 on your behalf?</p> <p>15 A I did.</p> <p>16 Q If you could turn to the second page</p> <p>17 of your letter, please, sir. You will see the</p> <p>18 first full paragraph begins, "Pursuant to the</p> <p>19 agreement."</p> <p>20 A Correct.</p> <p>21 Q Do you have that?</p> <p>22 A Yes.</p> <p>23 Q It reads, "Pursuant to the agreement</p> <p>24 LBI will transfer all customer accounts, including</p> <p>25 100 percent of each customer's net equity, as</p>
Page 104	Page 105
<p>1 Confidential - K. Raisler</p> <p>2 reflected on the books of LBI, to the LLC. "</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q That letter contemplates a transfer</p> <p>6 of the futures business into a newly formed</p> <p>7 Delaware limited liability company; is that</p> <p>8 correct?</p> <p>9 A Among other things, yes.</p> <p>10 Q Did the transfer to the LLC ever</p> <p>11 happen?</p> <p>12 A To my knowledge, no.</p> <p>13 Q Were you aware, sir, whether or not</p> <p>14 Barclays -- withdrawn.</p> <p>15 Were you aware, Mr. Raisler, whether</p> <p>16 or not Lehman cleared futures positions for its</p> <p>17 affiliates either in the U.S. or ex-U.S.?</p> <p>18 A Yes, I am aware.</p> <p>19 Q Can you tell me, sitting here today,</p> <p>20 do you know which affiliates that it cleared</p> <p>21 positions for?</p> <p>22 A In the U.S. markets, I believe it</p> <p>23 cleared for all of its affiliates.</p> <p>24 Q Do you know whether or not Lehman</p> <p>25 cleared for its affiliates outside of the U.S.?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A Yes. It was my understanding that in</p> <p>3 the U.S. markets, LBI, so we can be more precise,</p> <p>4 cleared for all of the non-U.S. affiliates of</p> <p>5 Lehman trading in U.S. markets.</p> <p>6 Q Do you know whether or not LBI</p> <p>7 cleared for non-U.S. affiliates in markets outside</p> <p>8 of the U.S.?</p> <p>9 A I don't believe LBI had clearing</p> <p>10 rights with respect to any markets outside the</p> <p>11 U.S., or at least I am not aware of any.</p> <p>12 Q Was it your understanding of the</p> <p>13 business agreement between Lehman and Barclays,</p> <p>14 sir, that the accounts that non-U.S. affiliates</p> <p>15 had with LBI for clearing futures in the U.S.,</p> <p>16 that those accounts would be transferred to</p> <p>17 Barclays?</p> <p>18 MS. BLOOMER: Objection to form.</p> <p>19 A My understanding was that all of the</p> <p>20 accounts were to be transferred to Barclays.</p> <p>21 Q Did you ever have any discussions</p> <p>22 with anyone, Mr. Raisler, as to the treatment of</p> <p>23 the Lehman affiliate accounts elsewhere in the</p> <p>24 transaction between Lehman and Barclays, by which</p> <p>25 I mean other than as it relates to the futures</p>

Page 106	Page 107
<p>1 Confidential - K. Raisler</p> <p>2 business?</p> <p>3 MS. BLOOMER: Objection to form.</p> <p>4 A I am sorry, I am going to need you to</p> <p>5 restate that, because I wasn't sure I followed</p> <p>6 you.</p> <p>7 Q Let me try it this way. I think you</p> <p>8 just testified that if a Lehman affiliate outside</p> <p>9 of the U.S., such as LBIE, for example, had an</p> <p>10 account with LBI through which LBI would clear</p> <p>11 LBI's business in the U.S., for example at the</p> <p>12 CME, that was an account that would be transferred</p> <p>13 to Barclays.</p> <p>14 MS. BLOOMER: Again I'm going to</p> <p>15 object to form and vagueness of the term</p> <p>16 "account."</p> <p>17 MR. LACY: You mean futures account.</p> <p>18 MR. OXFORD: Right.</p> <p>19 MS. BLOOMER: I still object.</p> <p>20 BY MR. OXFORD:</p> <p>21 Q Does that accurately reflect your</p> <p>22 understanding that the futures account of the</p> <p>23 non-U.S. Lehman affiliate would be transferred to</p> <p>24 Barclays?</p> <p>25 A Yes. That was my understanding.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q And did you have an understanding,</p> <p>3 sir, that other than in respect of futures</p> <p>4 accounts, that affiliate accounts of LBI were not</p> <p>5 being transferred to Barclays?</p> <p>6 MS. BLOOMER: Objection, lacks</p> <p>7 foundation.</p> <p>8 THE WITNESS: I am sorry, could you</p> <p>9 read that back again.</p> <p>10 (Record read.)</p> <p>11 A I was not involved in issues</p> <p>12 associated with non-U.S. affiliates of Lehman's</p> <p>13 accounts other than in the context of futures, so</p> <p>14 I would not be in a good position to answer that</p> <p>15 question.</p> <p>16 Q The answer is you don't know?</p> <p>17 MS. BLOOMER: Objection, and instruct</p> <p>18 the witness not to answer to the extent it</p> <p>19 calls for the disclosure of privileged</p> <p>20 communications with Barclays.</p> <p>21 A I don't recall.</p> <p>22 Q That's fine, thank you.</p> <p>23 Sticking with paragraph -- the</p> <p>24 second -- sorry, the first full paragraph on page</p> <p>25 two of your letter, Mr. Raisler, you go on to say,</p>
Page 108	Page 109
<p>1 Confidential - K. Raisler</p> <p>2 "Some of these accounts are accounts that contain</p> <p>3 no open commodity positions and accounts that are</p> <p>4 in deficit within the meaning of certain CFTC</p> <p>5 regulations."</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Others may be, quote, house accounts</p> <p>9 as defined in Regulation 190.01W.</p> <p>10 A Correct.</p> <p>11 Q Do you see that?</p> <p>12 A Yes.</p> <p>13 Q I don't mean to mischaracterize that.</p> <p>14 I know there is another cite to the CFR after</p> <p>15 that.</p> <p>16 Was it your understanding that you</p> <p>17 were seeking in this letter, Mr. Raisler, the</p> <p>18 CFTC's consent for a bulk transfer of LBI</p> <p>19 proprietary futures trading accounts from Lehman</p> <p>20 to Barclays?</p> <p>21 A Basically this letter asks for CFTC</p> <p>22 permission for the transfer of three frequent</p> <p>23 types of accounts. If I can read from the bottom</p> <p>24 of page two, it would be the house accounts, as</p> <p>25 you just read in the sentence that you just</p>	<p>1 Confidential - K. Raisler</p> <p>2 highlighted; accounts that are in deficit, which</p> <p>3 would normally not be transferable except for</p> <p>4 permission; and accounts that have no open</p> <p>5 commodity contracts.</p> <p>6 All three of those accounts without</p> <p>7 permission would not be transferable.</p> <p>8 Q And house accounts are --</p> <p>9 A The house accounts -- I'm sorry.</p> <p>10 Q House accounts are the accounts</p> <p>11 through which Lehman or LBI would conduct</p> <p>12 proprietary trading; correct?</p> <p>13 A If I can restate your comment a</p> <p>14 little differently. The house accounts defined in</p> <p>15 190.01W would be all of the proprietary accounts</p> <p>16 of Lehman, which would include the accounts of</p> <p>17 affiliates which otherwise would be customer</p> <p>18 accounts on the books of Barclays.</p> <p>19 Q What do you mean when you say they</p> <p>20 would otherwise be customer accounts?</p> <p>21 A When they are transferred from</p> <p>22 Lehman, the affiliate accounts are not anymore</p> <p>23 affiliates, they are customers.</p> <p>24 Q The second type of account permission</p> <p>25 for the transfer of which you are seeking in this</p>

Page 110	Page 111
<p>1 Confidential - K. Raisler</p> <p>2 letter is accounts that are in deficit. What do</p> <p>3 you mean when you write accounts that are in</p> <p>4 deficit?</p> <p>5 A Basically that means an individual</p> <p>6 customer account on the books of Lehman -- I guess</p> <p>7 technically it could include an affiliate as well,</p> <p>8 but a customer account on the books of Lehman is</p> <p>9 in fact in deficit, so it is -- there is a</p> <p>10 shortfall in that account, and the -- that</p> <p>11 individual customer owes and has an outstanding</p> <p>12 margin call.</p> <p>13 Q The third category is accounts that</p> <p>14 have no open commodity contracts. Can you explain</p> <p>15 what you mean by that, please?</p> <p>16 A A commodity contract for this purpose</p> <p>17 would be a futures position, and some of those</p> <p>18 accounts may have open, open trade equity, that is</p> <p>19 cash or securities, in their segregated account,</p> <p>20 but no actual active futures position.</p> <p>21 Q Would the accounts that you describe</p> <p>22 in point three at the bottom of page two of your</p> <p>23 letter include proprietary accounts, house</p> <p>24 accounts, or would that be limited to customer</p> <p>25 accounts?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I believe that the house accounts are</p> <p>3 covered by one, and so three would not refer to</p> <p>4 house accounts.</p> <p>5 Q Okay. Moving back up to the first</p> <p>6 full paragraph on page two, the last sentence in</p> <p>7 your letter says, "We understand that LBI has</p> <p>8 sufficient segregated and secured amount funds, as</p> <p>9 well as sufficient regulatory capital pursuant to</p> <p>10 the provisions of the Commodity Exchange Act and</p> <p>11 the Commission's regulations thereunder."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q Can you tell me what you meant by</p> <p>15 this sentence?</p> <p>16 A I think this is some of what we</p> <p>17 discussed before the break, that up until the time</p> <p>18 of this letter, there had been no defaults by</p> <p>19 Lehman in terms of meeting its obligations to the</p> <p>20 various clearing houses of which it was a member.</p> <p>21 As I indicated before the break as</p> <p>22 well, that doesn't indicate how much capital and</p> <p>23 collateral there was for the future obligations,</p> <p>24 which obviously is the point of concern by the</p> <p>25 OCC, by the CME and by the CFTC as well, and why</p>
Page 112	Page 113
<p>1 Confidential - K. Raisler</p> <p>2 there is a need to get this relief.</p> <p>3 Q Can you tell me, Mr. Raisler, how it</p> <p>4 is you get from the position where there is a lack</p> <p>5 of default by Lehman, in its futures trading, to a</p> <p>6 conclusion that there is sufficient segregated and</p> <p>7 secured amount funds?</p> <p>8 A Well, as indicated here, some of the</p> <p>9 customers are in deficit potentially, so with</p> <p>10 respect to those customers, there would be</p> <p>11 inadequate clearing, segregated or secured funds,</p> <p>12 so it must mean that other customers or the</p> <p>13 buffer, if you will, made it, at that snapshot in</p> <p>14 time, sufficient in terms of secured and</p> <p>15 segregated funds, as well as the regulatory</p> <p>16 capital is not -- is separate.</p> <p>17 But the secured and segregated funds</p> <p>18 would be an aggregate, as I indicated earlier.</p> <p>19 The account would be a customer seg account which</p> <p>20 would aggregate all of the customer positions.</p> <p>21 Effectively, to oversimplify, some customers'</p> <p>22 money is being used to protect those customers</p> <p>23 that are in deficit, so that the total amount of</p> <p>24 money is sufficient.</p> <p>25 Q And it's also true in addition to</p>	<p>1 Confidential - K. Raisler</p> <p>2 customer A potentially covering the obligations of</p> <p>3 customer B, Lehman's buffer money --</p> <p>4 A Correct.</p> <p>5 Q -- would also be covering the</p> <p>6 obligations of a customer who may be in default;</p> <p>7 is that correct?</p> <p>8 A Be clear. In deficit.</p> <p>9 Q Sorry.</p> <p>10 A We didn't say default.</p> <p>11 Yes, that is correct. The</p> <p>12 combination of excess, some customers having more</p> <p>13 in segregation than would be required, combined</p> <p>14 with the buffer, allowed this representation to be</p> <p>15 made at this point in time.</p> <p>16 Q Okay. To be clear, is this</p> <p>17 representation that you made to the CFTC based on</p> <p>18 something other than the fact that Lehman hadn't</p> <p>19 defaulted at any exchange or clearing</p> <p>20 organization, up until the date on which you</p> <p>21 e-mailed the letter?</p> <p>22 A That would be true with respect to</p> <p>23 the seg and secured amounts. The sufficient</p> <p>24 regulatory capital would be a separate calculation</p> <p>25 that would have been represented to us by Lehman.</p>

<p style="text-align: right;">Page 114</p> <p>1 Confidential - K. Raisler</p> <p>2 Q Okay. We will get to regulated</p> <p>3 capital in a second, and I appreciate the, the</p> <p>4 care with which you answered that.</p> <p>5 Focusing on your statement in your</p> <p>6 letter to the CFTC, "We understand that LBI has</p> <p>7 sufficient segregated and secured amount funds,"</p> <p>8 can you tell me what, what that statement is based</p> <p>9 on.</p> <p>10 A It's based on, one, the absence of</p> <p>11 default, and two, I assume some representations</p> <p>12 that confirm that, that we got from Lehman.</p> <p>13 Q Focusing on the second part of your</p> <p>14 answer, the representations that you assume you</p> <p>15 got from Lehman, can you be more specific about</p> <p>16 any representations you received that LBI has</p> <p>17 sufficient segregated and secured amount funds</p> <p>18 before you wrote this letter to the CFTC?</p> <p>19 A Well, I think that they were able to</p> <p>20 confirm what we generally knew, which is that</p> <p>21 there had not been any defaults. We would take</p> <p>22 significant comfort in that alone, and we were in</p> <p>23 separate touch with the exchanges and clearing</p> <p>24 houses, although that wouldn't guarantee we would</p> <p>25 have been so informed.</p>	<p style="text-align: right;">Page 115</p> <p>1 Confidential - K. Raisler</p> <p>2 Q So are the representations that,</p> <p>3 underpin -- withdrawn.</p> <p>4 The representations to you,</p> <p>5 Mr. Raisler, that underpin your statement to the</p> <p>6 CFTC, are simply representations from Lehman that</p> <p>7 there have been no defaults at the exchanges or</p> <p>8 clearing organizations in the customers</p> <p>9 business -- sorry, futures business, or did they</p> <p>10 make additional representations?</p> <p>11 A I would -- I believe that they made a</p> <p>12 representation to us consistent with the words in</p> <p>13 that sentence.</p> <p>14 Q So are you essentially repeating to</p> <p>15 the CFTC what LBI has represented to you?</p> <p>16 A It's actually backwards, but yes.</p> <p>17 And by backwards, I mean that the CFTC demanded we</p> <p>18 make this representation as a condition to their</p> <p>19 taking the action, and so we would have been</p> <p>20 inclined to make the representation if we could</p> <p>21 make it and confirmed it by the two methods I have</p> <p>22 described, no default and the corresponding</p> <p>23 representation from LBI.</p> <p>24 Q Why would the CFTC -- withdrawn.</p> <p>25 Do you know why the CFTC demanded</p>
<p style="text-align: right;">Page 116</p> <p>1 Confidential - K. Raisler</p> <p>2 that this representation be contained in your</p> <p>3 letter?</p> <p>4 A I don't believe we ever specifically</p> <p>5 discussed it. But if this were not the case, then</p> <p>6 they would be looking to take more dramatic action</p> <p>7 and may not be prepared to allow a movement of the</p> <p>8 type described in this letter.</p> <p>9 Q Do you know -- withdrawn.</p> <p>10 Mr. Raisler, do you know who at LBI</p> <p>11 provided the representation to you about the</p> <p>12 sufficiency of LBI's segregated and secured amount</p> <p>13 funds that you then used as a basis for your</p> <p>14 letter to the CFTC?</p> <p>15 A I don't precisely recall it, but</p> <p>16 again it would be probably the same group led by</p> <p>17 Jeff Jennings.</p> <p>18 Q I think I have this from your earlier</p> <p>19 testimony, but I just want to be sure. Is this</p> <p>20 statement about your understanding of the</p> <p>21 sufficiency of LBI's segregated and secured amount</p> <p>22 funds, is that based on any calculations that you</p> <p>23 or anyone working at your direction or Barclays'</p> <p>24 saw in connection with those accounts?</p> <p>25 MS. BLOOMER: Objection.</p>	<p style="text-align: right;">Page 117</p> <p>1 Confidential - K. Raisler</p> <p>2 A I can answer the first part, which is</p> <p>3 not me nor anybody under my direction. I don't</p> <p>4 believe anybody else at Barclays, but I couldn't</p> <p>5 be sure. And just to be clear on that point, I</p> <p>6 think the use of the words "we understand" are</p> <p>7 important in that regard.</p> <p>8 Q Who is the "we" there, sir?</p> <p>9 A I think "we" in this context is</p> <p>10 probably Sullivan & Cromwell, as best reading of</p> <p>11 the letter. We said, "on behalf of our client,"</p> <p>12 Barclays Capital, Inc., this is a request, so I</p> <p>13 think it would be -- and we use the term "we"</p> <p>14 throughout. I assume we are talking the firm in</p> <p>15 submitting this letter requested.</p> <p>16 Q So it is Sullivan & Cromwell's</p> <p>17 understanding that LBI has sufficient segregated</p> <p>18 and secured amount funds for what purpose, sir?</p> <p>19 MS. BLOOMER: Objection to form.</p> <p>20 A I think the language of the sentence</p> <p>21 picks it up, pursuant to the provisions of the</p> <p>22 Commodity Exchange Act and Commission regulations.</p> <p>23 Q And in layman's terms, sir, is that</p> <p>24 your understanding -- in the last sentence of this</p> <p>25 paragraph we are looking at that begins "we</p>

Page 118	Page 119
<p>1 Confidential - K. Raisler</p> <p>2 understand," does that equate to your</p> <p>3 understanding that there is not a shortfall in the</p> <p>4 segregated and secured amount funds that LBI was</p> <p>5 required under the Commodities Exchange Act and</p> <p>6 the Commission's regulations to maintain?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 A That one got a little complicated.</p> <p>9 Q Yeah, sorry. Let me try this again</p> <p>10 with a little better syntax.</p> <p>11 A Okay. Particularly if we can avoid</p> <p>12 using "layman" when referring to Lehman. That is</p> <p>13 particularly confusing.</p> <p>14 Q In writing that last sentence, sir,</p> <p>15 that begins, "We understand," did, did you believe</p> <p>16 that LBI did not have a shortfall in the</p> <p>17 segregated and secured amount funds that it was</p> <p>18 required to maintain pursuant to the Commodity</p> <p>19 Exchange Act and the Commission's regulations</p> <p>20 thereunder?</p> <p>21 A That would have been our</p> <p>22 understanding at this moment in time, yes.</p> <p>23 Q Thank you.</p> <p>24 Moving down the page to the next</p> <p>25 paragraph, the last sentence of that reads,</p>	<p>1 Confidential - K. Raisler</p> <p>2 "Moreover, regulation 190.06E2. Do you have that,</p> <p>3 sir?</p> <p>4 A Yes.</p> <p>5 Q It goes on to say, "prohibits the</p> <p>6 transfer in respect of any eligible account of</p> <p>7 property whose value," quotes, "would exceed the</p> <p>8 funded balance of such account, based on available</p> <p>9 information as at the close of business on the</p> <p>10 business day immediately preceding the transfer,"</p> <p>11 close quotes, "less the value of prior transfers."</p> <p>12 Do you see that sentence?</p> <p>13 A Yes, yes.</p> <p>14 Q What was the purpose of including</p> <p>15 that sentence in your letter, sir?</p> <p>16 A Because we were seeking an exemption</p> <p>17 from that prohibition, so it clarified, as the</p> <p>18 other parts of the letter did, what we were</p> <p>19 seeking and the contours in which we were seeking</p> <p>20 it.</p> <p>21 Q Can you explain to me what</p> <p>22 prohibition you were seeking exemption for?</p> <p>23 A In this regard, there are certain</p> <p>24 permitted movements of accounts between FCMs, in</p> <p>25 the context of a bankruptcy or in other contexts.</p>
Page 120	Page 121
<p>1 Confidential - K. Raisler</p> <p>2 There are other things that are prohibited absent</p> <p>3 CFTC express approval.</p> <p>4 We were seeking express approval for</p> <p>5 a number of things, one of which was if an account</p> <p>6 had -- if an individual customer's account had</p> <p>7 collateral in excess of that customer's</p> <p>8 requirements, that that money would move with the</p> <p>9 customer's account.</p> <p>10 Q In any part of your letter that I</p> <p>11 marked as 659-A, the final signed one, are you</p> <p>12 seeking permission from the CFTC to move to</p> <p>13 Barclays from LBI any LBI funds that you have</p> <p>14 described previously as a buffer, the additional</p> <p>15 monies that LBI kept in the customer segregated</p> <p>16 and secured accounts?</p> <p>17 A We would not need permission from the</p> <p>18 CFTC to do that.</p> <p>19 Q Thank you. That's all I have for</p> <p>20 that exhibit. Let me mark another one.</p> <p>21 (Exhibit 660-A marked for</p> <p>22 identification as of this date.)</p> <p>23</p> <p>24 Q Mr. Raisler, I have handed you what I</p> <p>25 have marked as Exhibit 660-A, which is an e-mail</p>	<p>1 Confidential - K. Raisler</p> <p>2 with the Bates number BCISC 00009653, and the</p> <p>3 attachments run through 9665.</p> <p>4 If you could take a moment to review</p> <p>5 that and let me know if you have seen it before</p> <p>6 and let me know when you are done, please. Also,</p> <p>7 to the extent you identify any of the possible</p> <p>8 production errors we referenced earlier with this</p> <p>9 document, if you can let me know that, too.</p> <p>10 MS. BLOOMER: Does anyone know why</p> <p>11 the bottom Bates number is the same on all</p> <p>12 of these pages, or on at least a few anyway,</p> <p>13 9662?</p> <p>14 THE WITNESS: It has multiple</p> <p>15 numbers.</p> <p>16 MS. BLOOMER: Right, but the bottom</p> <p>17 number is the same Bates label on multiple</p> <p>18 pages.</p> <p>19 THE WITNESS: It isn't so on the --</p> <p>20 MR. OXFORD: I don't know.</p> <p>21 MR. LACY: And I don't know.</p> <p>22 MR. OXFORD: As long as we can</p> <p>23 refer --</p> <p>24 MR. LACY: What are you looking at?</p> <p>25 MS. BLOOMER: Do you see this says</p>

Page 122	Page 123
<p>1 Confidential - K. Raisler</p> <p>2 9654? The bottom of the two Bates numbers</p> <p>3 doesn't seem to be correct, but the top one</p> <p>4 does.</p> <p>5 MR. LACY: The bottom should just be</p> <p>6 ignored. The bottom number should just be</p> <p>7 ignored.</p> <p>8 A Okay.</p> <p>9 Q Do you recognize this document, sir?</p> <p>10 A Yes, I do.</p> <p>11 Q Can you tell me what it is, please?</p> <p>12 A We are referring specifically to the</p> <p>13 first one of the three?</p> <p>14 Q Yes. The e-mail.</p> <p>15 A The e-mail. Oh, the e-mail. Okay.</p> <p>16 The e-mail is an update about two</p> <p>17 hours later to the CFTC with a new letter that</p> <p>18 changes via deletion the structure of the</p> <p>19 transaction to eliminate the intermediate LLC</p> <p>20 arrangement that was discussed and described in</p> <p>21 the prior letter.</p> <p>22 Q And is the first attachment to that</p> <p>23 letter, sir, is that the final executed letter?</p> <p>24 A Yes, it's an executed letter that is</p> <p>25 intended to supersede the letter that we just</p>	<p>1 Confidential - K. Raisler</p> <p>2 finished discussing, the 659-A.</p> <p>3 Q Again, sir, on the last page, that is</p> <p>4 not your signature on 660-A, is it?</p> <p>5 A No. Again, it is Mr. Gilberg's.</p> <p>6 Q Did you authorize Mr. Gilberg to sign</p> <p>7 for you?</p> <p>8 A I did.</p> <p>9 Q Is it correct, Mr. Raisler, that the</p> <p>10 updated letter doesn't change in any way the</p> <p>11 representation as to Sullivan & Cromwell's</p> <p>12 understanding as to the sufficiency of the</p> <p>13 segregated and secured amount funds that we</p> <p>14 discussed earlier?</p> <p>15 A Correct. This letter only changes,</p> <p>16 as I recall it and understand it, the LLC</p> <p>17 references that were in the letter that we</p> <p>18 previously discussed.</p> <p>19 Q Now, this letter also makes a</p> <p>20 representation, sir, as to Sullivan & Cromwell's</p> <p>21 understanding of the sufficiency as to LBI's</p> <p>22 regulatory capital; is that correct?</p> <p>23 A In that respect, it's not different</p> <p>24 from the last letter.</p> <p>25 Q I am only asking with respect to this</p>
Page 124	Page 125
<p>1 Confidential - K. Raisler</p> <p>2 letter because I realize I forgot to ask you with</p> <p>3 respect to the first letter. I don't mean to</p> <p>4 confuse.</p> <p>5 A Right.</p> <p>6 Q What did -- what did you mean when</p> <p>7 you wrote to the CFTC that you understood that LBI</p> <p>8 has sufficient regulatory capital?</p> <p>9 A As we discussed earlier, regulatory</p> <p>10 capital is required under CFTC legislation and</p> <p>11 rules consistent with a formula that relates to</p> <p>12 the surmise of the customer seg and secured assets</p> <p>13 that it's holding on behalf of customers, and so</p> <p>14 here we would have received a representation, I am</p> <p>15 sure, from Lehman, that they had sufficient</p> <p>16 regulatory capital.</p> <p>17 I did not myself check that. I don't</p> <p>18 know whether anybody at Barclays did either.</p> <p>19 Q Do you know whether or not anyone at</p> <p>20 Sullivan & Cromwell checked that for you?</p> <p>21 A I am certain that nobody else at</p> <p>22 Sullivan & Cromwell checked that for me.</p> <p>23 Q Are you able to testify as to the</p> <p>24 source of the representation made to you about the</p> <p>25 sufficiency of LBI's regulatory capital other than</p>	<p>1 Confidential - K. Raisler</p> <p>2 to say generally that someone at Lehman must have</p> <p>3 done it?</p> <p>4 MS. BLOOMER: I'm going to object to</p> <p>5 the extent you keep saying sufficiency of</p> <p>6 the regulatory capital and leaving off the</p> <p>7 regulations pursuant to which it speaks to</p> <p>8 sufficiency.</p> <p>9 Q Trish's objection is a fair one. I</p> <p>10 don't mean to mischaracterize your letter. I am</p> <p>11 simply seeking that you tell me, as best you are</p> <p>12 able to today, who at Lehman gave either you or</p> <p>13 anyone else at Sullivan & Cromwell the</p> <p>14 representation that LBI had sufficient regulatory</p> <p>15 capital pursuant to the particular provisions of</p> <p>16 the Commodity Exchange Act and the Commission's</p> <p>17 regulations that you reference in your letter to</p> <p>18 the CFTC.</p> <p>19 A In answer to your previous question,</p> <p>20 you are correct.</p> <p>21 Q I am correct that you not able to</p> <p>22 tell me beyond a statement generally that someone</p> <p>23 at Lehman must have done so, but sitting here</p> <p>24 today, sir, you are not able to tell me who that</p> <p>25 person was?</p>

Page 126	Page 127
<p>1 Confidential - K. Raisler</p> <p>2 A That is correct.</p> <p>3 (Exhibit 661-A marked for</p> <p>4 identification as of this date.)</p> <p>5</p> <p>6 Q Mr. Raisler, I have handed you what I</p> <p>7 have marked as Exhibit 661-A, which is an e-mail</p> <p>8 BCISC 00009298, with an attachment that goes</p> <p>9 through 9301.</p> <p>10 A Correct.</p> <p>11 Q Can you tell me, please, focusing on</p> <p>12 the attachment to the e-mail, what that document</p> <p>13 is, please?</p> <p>14 A I am sorry, you want me to focus on</p> <p>15 the e-mail or the attachment?</p> <p>16 Q The attachment to the e-mail.</p> <p>17 A The attachment is a letter from the</p> <p>18 CFTC to me, that approves the request set forth in</p> <p>19 the letter we just finished discussing for</p> <p>20 authorization to transfer the accounts, and the</p> <p>21 terms and the conditions described in the prior</p> <p>22 request.</p> <p>23 Q That it is all I have for that one,</p> <p>24 sir.</p> <p>25 Were you involved, Mr. Raisler, in</p>	<p>1 Confidential - K. Raisler</p> <p>2 Barclays' assumption of Lehman's -- I should say</p> <p>3 LBI's rights and obligations in its futures</p> <p>4 business, by which I mean specifically</p> <p>5 implementation of how Barclays assumes</p> <p>6 responsibilities for those accounts?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 A Generally, yes.</p> <p>9 Q Can you tell me, please, what your</p> <p>10 role was in that regard.</p> <p>11 A In the week starting September 22nd,</p> <p>12 after the approvals, a process began to move</p> <p>13 positions and funds from Lehman to Barclays. I</p> <p>14 was involved in a series of meetings and</p> <p>15 discussions about effectuating that. In</p> <p>16 particular, moving the funds was quite complex and</p> <p>17 was the subject of a lot of back and forth</p> <p>18 involved, not just Barclays and Lehman, but the</p> <p>19 CFTC, the trustee, and JPMorgan.</p> <p>20 Q Which funds are you referring to in</p> <p>21 that last answer, sir?</p> <p>22 A Broadly stated, the collateral that</p> <p>23 was securing the customer positions at the U.S.</p> <p>24 futures exchanges, as well as the collateral that</p> <p>25 was supporting positions on non-U.S. exchanges.</p>
Page 128	Page 129
<p>1 Confidential - K. Raisler</p> <p>2 Q Are these the same funds that were</p> <p>3 held in the customer segregated and secured</p> <p>4 accounts that you have testified to earlier?</p> <p>5 A Yes, that is correct.</p> <p>6 Q Why was the movement of those funds</p> <p>7 complex, sir?</p> <p>8 A We hadn't anticipated it would be</p> <p>9 that complex in the U.S., where the rules are</p> <p>10 quite clear. However, there was a number of</p> <p>11 players who wanted to get comfort that they would</p> <p>12 be protected if they moved the funds. And so a</p> <p>13 process had to be developed in order to effectuate</p> <p>14 those movements.</p> <p>15 Q Who are those players, sir?</p> <p>16 A Well, I guess in particular, JPMorgan</p> <p>17 as the bank that was holding the seg and secured</p> <p>18 funds, they wanted to make sure that transferring</p> <p>19 those funds to Barclays would be consistent with</p> <p>20 authorizations that had been obtained through the</p> <p>21 bankruptcy.</p> <p>22 Q To your knowledge, sir, did JPMorgan</p> <p>23 get the comfort they were seeking in this regard?</p> <p>24 A They did from the trustee.</p> <p>25 Q Tell me what you know about that,</p>	<p>1 Confidential - K. Raisler</p> <p>2 please.</p> <p>3 MS. BLOOMER: Objection, form.</p> <p>4 A I think the, the view that Barclays</p> <p>5 had, and that we had as their counsel, was that</p> <p>6 the bankruptcy court's approval was sufficient and</p> <p>7 should have been sufficient for JPMorgan to</p> <p>8 authorize the movement of the funds.</p> <p>9 JPMorgan saw it differently, and</p> <p>10 sought to get express approval from the trustee.</p> <p>11 The form and content of that approval was</p> <p>12 negotiated and it took a number of days.</p> <p>13 Q When did those negotiations take</p> <p>14 place, sir?</p> <p>15 A I think the positions, the futures</p> <p>16 positions moved on the 22nd. So I would assume</p> <p>17 that discussions about the collateral moving would</p> <p>18 have begun at that time. And I believe the funds</p> <p>19 started to move and finally were relocated at</p> <p>20 Barclays around the 20 -- I am sorry, around the</p> <p>21 first week in October.</p> <p>22 Q The customer and -- customer</p> <p>23 segregated and secured funds that were moved in</p> <p>24 early October, sir, to your knowledge, did they</p> <p>25 include any assets that were Lehman assets,</p>

Page 130	Page 131
<p>1 Confidential - K. Raisler</p> <p>2 specifically the buffer that you have described</p> <p>3 earlier, between, I suppose the minimum that was</p> <p>4 required to be in these accounts and what was</p> <p>5 desirable from a business perspective to have in</p> <p>6 these accounts?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 MR. LACY: Object to the form of the</p> <p>9 question.</p> <p>10 MR. OXFORD: Withdrawn.</p> <p>11 Q Did, did the accounts and the funds,</p> <p>12 the segregated and secured funds that were being</p> <p>13 moved in October, did they include LBI assets as</p> <p>14 well as assets that were the property of</p> <p>15 customers?</p> <p>16 A I think I can answer that question</p> <p>17 this way: It was my understanding that all of the</p> <p>18 property that was in the seg and secured accounts</p> <p>19 moved to Barclays.</p> <p>20 Q And at the time it was moved, sir,</p> <p>21 did you have an understanding one way or the other</p> <p>22 as to whether the property included property of</p> <p>23 LBI as well as property of customers?</p> <p>24 A I don't believe I had an</p> <p>25 understanding one way or the other, other than my</p>	<p>1 Confidential - K. Raisler</p> <p>2 best recollection was that all of the collateral</p> <p>3 in those accounts moved to Barclays.</p> <p>4 Q Okay. Just based on your general</p> <p>5 experience and familiarity with the industry, sir,</p> <p>6 would you have expected the property in those seg</p> <p>7 and secured accounts that moved to Barclays to</p> <p>8 include LBI property as well as customer property?</p> <p>9 MR. LACY: Object to form of the</p> <p>10 question.</p> <p>11 A Yes.</p> <p>12 Q Do you know one way or the other,</p> <p>13 sir, whether that expectation was also Barclays'</p> <p>14 expectation at the time the funds were moved in</p> <p>15 early October?</p> <p>16 MS. BLOOMER: Object. And I am going</p> <p>17 to instruct the witness not to disclose the</p> <p>18 substance of communications with Barclays.</p> <p>19 A Yes.</p> <p>20 Q Do you know, sir, that Barclays did</p> <p>21 in fact expect that the customer seg and secured</p> <p>22 amounts that were moved in early October did</p> <p>23 include LBI assets in addition to customer assets?</p> <p>24 MS. BLOOMER: Object to the form, and</p> <p>25 the same privilege objection.</p>
Page 132	Page 133
<p>1 Confidential - K. Raisler</p> <p>2 THE WITNESS: I'm sorry. Can I get</p> <p>3 that read back. I just want to understand</p> <p>4 the word "knew" in that context.</p> <p>5 (Record read.)</p> <p>6 A I think so, although I don't</p> <p>7 specifically recall that discussion at that time.</p> <p>8 Q Do you know, Mr. Raisler, that --</p> <p>9 withdrawn.</p> <p>10 Do you know whether or not Barclays</p> <p>11 knew at the time of the closing of the transaction</p> <p>12 on the 22nd of September, whether or not the</p> <p>13 customer seg and secured funds held by Lehman</p> <p>14 included not just customer property, but LBI</p> <p>15 assets as well?</p> <p>16 MS. BLOOMER: I am going to object,</p> <p>17 and I am going to object generally to you</p> <p>18 asking this witness from Sullivan & Cromwell</p> <p>19 questions about what he knew about what</p> <p>20 Barclays believed at the time.</p> <p>21 Obviously, that would have been</p> <p>22 conveyed through discussions with counsel,</p> <p>23 so I am going to instruct the witness not to</p> <p>24 disclose the substance or things he learned</p> <p>25 through communications with Barclays.</p>	<p>1 Confidential - K. Raisler</p> <p>2 To the extent there were discussions</p> <p>3 that you had in the presence of third</p> <p>4 parties in which you learned information</p> <p>5 that would be responsive to the question,</p> <p>6 you can answer.</p> <p>7 A I don't have anything to add to my</p> <p>8 prior answers on this.</p> <p>9 Q Other than the transfer of segregated</p> <p>10 and secured funds, Mr. Raisler, were you involved</p> <p>11 in any other of the mechanics of the</p> <p>12 implementation of Barclays' purchase of the Lehman</p> <p>13 futures business?</p> <p>14 A In the U.S. largely, no. But outside</p> <p>15 the U.S., we were looking at not just moving of</p> <p>16 funds, but also moving of positions, and that was</p> <p>17 a more complicated undertaking.</p> <p>18 I guess also, I don't want to leave a</p> <p>19 gap. In the U.S., I was also involved in not just</p> <p>20 the seg and secured funds but also the movement of</p> <p>21 positions and assets of a proprietary sort, either</p> <p>22 positions of LBI or of its affiliates or of</p> <p>23 customers of its affiliates.</p> <p>24 Q Turning first to your involvement</p> <p>25 with the transfer of the U.S. business, sir. We</p>

Page 134

Page 135

Confidential - K. Raisler
discussed earlier the transfer and assumption
agreement that was executed between Barclays, the
OCC and SIPA trustee. Do you recall that
testimony?

A Yes.

Q Were there any other agreements put
in place in connection with U.S.-based futures
business with any other exchange or clearing,
organization to your knowledge?

A No, there were not, to my knowledge.
I also don't specifically recall, but I don't know
that the transfer and assumption agreement dealt
with futures either.

Q Can you tell me, please, what your
involvement was, sir, in moving proprietary assets
or positions of LBI or LBI's affiliates from
Lehman to Barclays?

A I can recall generally discussions
with Barclays, with Lehman and with the exchanges
on those movements of funds and positions. The
specifics are a little less clear.

Q Who at Lehman were you discussing the
movement of positions and collateral with?

A This, probably during this time

Confidential - K. Raisler
period would be more intensely with Ron Filler
than anybody else.

Q What were your discussions with
Mr. Filler?

A I think we, we shared information
about what we respectively learned, primarily in
the foreign markets, about what they were doing
with positions and what they were doing with
collateral. And we discussed less actively what
was going on in the U.S., which was a little bit
clearer.

Q Did Barclays enter into an agreement
with the Chicago Mercantile Exchange in connection
with its assumption of the rights and obligations
from Lehman of Lehman's futures business?

A No. One wouldn't expect that there
would be such an agreement, because the -- between
the order of the CFTC, which they would have
gotten a copy of, and the bankruptcy approval
order itself, the instructions were clear as to
what they would have to do. They are actually
copied on the CFTC letter.

Q Dealing with the ex-U.S. futures
positions, Mr. Raisler, did Barclays enter into

Page 136

Page 137

Confidential - K. Raisler
any agreements with any exchange, clearing
organization or other broker dealer in connection
with its assumption of LBI's rights and
obligations to the positions and collateral?

A Not to my knowledge, and I think I
would know.

Q Why would you think you would know?

A Because in part that was one of the
things I was working on during the time period.
So had there been anything negotiated, I think I
would have heard about it.

Again, the exchanges and clearing
houses were taking action pursuant to whatever
their legal regime was, and there was a very
substantial amount of ambiguity about the legal
regimes around the world and actions that would be
taken, in particular confusion around releasing
funds there were held by affiliates of LBI who
might have been the introducing or clearing
members of those foreign exchanges.

Q How is it Barclays went about getting
access to the positions and funds that were in
Lehman's futures accounts outside of the U.S.?

MS. BLOOMER: Objection to form,

Confidential - K. Raisler
assumes facts not in evidence.

A Well, first of all, that project is
still ongoing. Those monies that -- in some cases
in some jurisdictions the positions moved without
the collateral, and in some situations the
positions didn't move and the collateral didn't
move.

As a general matter, the collateral
has been slow to move in every location around the
world, in part because or in large part because
the position collateral was being held by an
affiliate of Lehman who itself had
bankruptcy-related issues and concerns.

So, this was a very difficult
project, one in its scale that was without
precedent. And so the ability to recover these
monies has been an ongoing process.

I think there has been some limited
amount of success with respect to a few foreign
accounts that were being held by third-party
brokers, but even there, those brokers have not
been willing to give the money to Barclays but
instead have returned the money to, broadly
stated, the Lehman estate, which means in those

<p style="text-align: right;">Page 138</p> <p>1 Confidential - K. Raisler</p> <p>2 situations where Lehman has taken over the</p> <p>3 positions -- I mean Barclays has taken over the</p> <p>4 positions of Lehman in those foreign</p> <p>5 jurisdictions, it's had to fund the obligations,</p> <p>6 the collateral obligations, from its own account,</p> <p>7 which just highlight the complexity of the</p> <p>8 transaction, broadly stated.</p> <p>9 Q Are you able to tell me on an</p> <p>10 exchange by exchange or broker dealer by broker</p> <p>11 dealer basis where Barclays has moved positions</p> <p>12 and/or collateral? Again, outside the U.S.</p> <p>13 MS. BLOOMER: Objection to form.</p> <p>14 MR. LACY: I'm sorry. Go ahead.</p> <p>15 A Okay. I can answer that question</p> <p>16 with respect to some of the jurisdictions but not</p> <p>17 all.</p> <p>18 Q Okay. With respect to the</p> <p>19 jurisdictions where you can answer, can you tell</p> <p>20 me where Barclays has moved positions and or</p> <p>21 collateral?</p> <p>22 MS. BLOOMER: Objection to form.</p> <p>23 A I can give you my best understanding</p> <p>24 of that.</p> <p>25 Q That is all I am asking for.</p>	<p style="text-align: right;">Page 139</p> <p>1 Confidential - K. Raisler</p> <p>2 A Right.</p> <p>3 In the U.K. my understanding is that</p> <p>4 positions have moved to Barclays, but with very</p> <p>5 limited exceptions collateral has not moved.</p> <p>6 With respect to Germany and Eurex,</p> <p>7 here again, positions moved and collateral has not</p> <p>8 moved. I think in this context without exception</p> <p>9 collateral has not moved.</p> <p>10 In Japan, there is supposed to be a</p> <p>11 bankruptcy hearing coming up, at which to decide</p> <p>12 whether to release the collateral funds, but</p> <p>13 again, the positions have moved without the</p> <p>14 collateral.</p> <p>15 Singapore, the same.</p> <p>16 In some jurisdictions that I haven't</p> <p>17 named, exchanges liquidated the positions of the</p> <p>18 customers leaving in question where the and how</p> <p>19 the excess collateral, if there was any excess,</p> <p>20 could be released and to whom, but that being</p> <p>21 subject to the local jurisdiction's bankruptcy</p> <p>22 regime.</p> <p>23 In Australia, as I indicated earlier,</p> <p>24 the positions moved, the collateral has not moved</p> <p>25 to Barclays to this date, to my knowledge. It has</p>
<p style="text-align: right;">Page 140</p> <p>1 Confidential - K. Raisler</p> <p>2 been released back to LBI, but not to Barclays.</p> <p>3 To be complete, in each of these</p> <p>4 contexts that I have just addressed to you, I may</p> <p>5 not be completely current on events, because</p> <p>6 things continue to move, and we have not been as</p> <p>7 intensely involved as we were in the weeks</p> <p>8 immediately following the transaction.</p> <p>9 Q In the instances where positions have</p> <p>10 moved, Mr. Raisler, did Barclays enter into any</p> <p>11 agreements with the broker dealers or any other</p> <p>12 third party with whom or through whom these</p> <p>13 positions were placed?</p> <p>14 A As I indicated, for the most part,</p> <p>15 most of the jurisdictions in the world were, the</p> <p>16 futures broker that LBI was trading through was an</p> <p>17 affiliate of Lehman, and in almost all of those</p> <p>18 cases that affiliate is in some sort of insolvency</p> <p>19 regime.</p> <p>20 There have been no agreements that I</p> <p>21 am aware of with respect to any of them, and that</p> <p>22 has locked up money in those situations. The</p> <p>23 positions are moved at the direction of the</p> <p>24 exchange and clearing house rather than the</p> <p>25 direction of the broker, and so positions can move</p>	<p style="text-align: right;">Page 141</p> <p>1 Confidential - K. Raisler</p> <p>2 even and collateral is stuck in an insolvent or</p> <p>3 bankrupt entity.</p> <p>4 Q Has Barclays then been in touch with</p> <p>5 foreign exchanges and clearing houses in an effort</p> <p>6 to get those organizations to move the positions?</p> <p>7 A And the collateral, yes, and I would</p> <p>8 also add to that equation, foreign regulators.</p> <p>9 Q Has Barclays entered into any</p> <p>10 agreements with foreign exchanges or clearing</p> <p>11 houses in connection with its efforts to have the</p> <p>12 positions and collateral moved to Barclays?</p> <p>13 A Again, not to my knowledge, and I</p> <p>14 think I would know. Again, I think each of these</p> <p>15 decisions are effectively self-effectuating</p> <p>16 pursuant to local law, so, one wouldn't expect</p> <p>17 that there would be agreements in those</p> <p>18 situations.</p> <p>19 Q Has Barclays, to your knowledge,</p> <p>20 Mr. Raisler, assumed all of LBI's obligations with</p> <p>21 respect to futures trading at foreign exchanges</p> <p>22 and clearing houses?</p> <p>23 MR. LACY: Objection. Could you make</p> <p>24 clear whether you are talking about the</p> <p>25 obligations on the clearing house side as</p>

Page 142	Page 143
<p>1 Confidential - K. Raisler</p> <p>2 opposed to the customer side?</p> <p>3 MR. OXFORD: Yes, sorry, I meant on</p> <p>4 the clearing house side.</p> <p>5 A I'm sorry, lost the train of the</p> <p>6 question there.</p> <p>7 Q Let me try it this way: Has</p> <p>8 Barclays, to your knowledge, Mr. Raisler, assumed</p> <p>9 LBI's clearing obligations with respect to the</p> <p>10 former Lehman futures positions at foreign</p> <p>11 exchanges and clearing houses?</p> <p>12 MR. LACY: Objection. That made it</p> <p>13 worse.</p> <p>14 A To the extent I understand your</p> <p>15 question, I think the answer is yes. When the</p> <p>16 positions moved, to the extent that they moved to</p> <p>17 Barclays, Barclays would assume the obligations to</p> <p>18 the clearing house that previously had been</p> <p>19 assumed by the affiliate or other entity that was</p> <p>20 previously clearing those positions for LBI.</p> <p>21 MR. OXFORD: Can we go off for a</p> <p>22 second.</p> <p>23 (Recess taken.)</p> <p>24 BY MR. OXFORD:</p> <p>25 Q Mr. Raisler, I am handing you what</p>	<p>1 Confidential - K. Raisler</p> <p>2 has been marked previously in these depositions as</p> <p>3 Exhibit 556. If you could take a moment to review</p> <p>4 that and let me know whether you have seen this</p> <p>5 document before, please.</p> <p>6 A Yes.</p> <p>7 Q In what context have you seen that</p> <p>8 document, sir?</p> <p>9 A I think I have seen it near</p> <p>10 contemporaneous with the date on it at one of the</p> <p>11 early meetings.</p> <p>12 Q Do you know who Alasdair Hodge is?</p> <p>13 A Yes, I do know who Alasdair Hodge is.</p> <p>14 Q Who is he?</p> <p>15 A Alasdair Hodge is, I guess,</p> <p>16 technically I think Tim Stack's boss. He runs</p> <p>17 futures or at the time I think he ran futures</p> <p>18 globally, whereas Tim Stack ran futures in the</p> <p>19 U.S.</p> <p>20 Q Generally speaking, Mr. Raisler, does</p> <p>21 this memorandum reflect the meeting that you</p> <p>22 attended on the 15th of September, 2008, that you</p> <p>23 testified to this morning?</p> <p>24 MR. LACY: Object to the form of the</p> <p>25 question.</p>
Page 144	Page 145
<p>1 Confidential - K. Raisler</p> <p>2 A Broadly stated. The goal of the</p> <p>3 meeting on Monday was to talk about a potential</p> <p>4 acquisition of the Lehman Brothers futures</p> <p>5 business, and this memo speaks to that, so, to</p> <p>6 that extent, yes.</p> <p>7 I think the memo -- I think as we</p> <p>8 discussed earlier, other events sort of overtook</p> <p>9 this memo in terms of a broader acquisition</p> <p>10 effort. This is actually a siloed -- this memo</p> <p>11 reflects a more siloed discussion of just looking</p> <p>12 at this business and not all the other capital</p> <p>13 markets activity that was going on within the</p> <p>14 Lehman-Barclays world.</p> <p>15 Q If you turn to the third paragraph</p> <p>16 that begins, "Lehman Brothers' future business</p> <p>17 overview." Do you see that?</p> <p>18 A Um-hum.</p> <p>19 Q It says, "Lehman's futures business</p> <p>20 consists of approximately 100 institutional</p> <p>21 clients and total global futures revenues of</p> <p>22 approximately \$250 million."</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Does that reflect the discussion that</p>	<p>1 Confidential - K. Raisler</p> <p>2 took place on September 15th at the meeting that</p> <p>3 you had with Barclays and Lehman that day?</p> <p>4 MR. LACY: I object to the form of</p> <p>5 the question. I don't know what you mean by</p> <p>6 "reflect."</p> <p>7 Q Do you understand the question, sir?</p> <p>8 A Let me try to answer it in my words.</p> <p>9 I think during the course of the</p> <p>10 meeting, these were the broad high-level data</p> <p>11 points that were shared by Lehman with the</p> <p>12 Barclays team.</p> <p>13 Q And those high-level data points</p> <p>14 include the sentence I just read or at least the</p> <p>15 substantive information contained in the sentence</p> <p>16 I just read about what Lehman's futures business</p> <p>17 consists of in terms of clients and revenue?</p> <p>18 A Correct. And while not trying to get</p> <p>19 ahead of you, the rest of the paragraph as well.</p> <p>20 Q Okay, thank you. I appreciate that.</p> <p>21 Towards the bottom of that paragraph,</p> <p>22 sir, in the memorandum, it notes that Lehman</p> <p>23 futures operates under two legal entities, LBI</p> <p>24 being the U.S.-based FCM and LBIE being the</p> <p>25 European-based FCM. Do you see that?</p>

<p style="text-align: right;">Page 146</p> <p>1 Confidential - K. Raisler</p> <p>2 A Yes.</p> <p>3 Q Was it your understanding as of the</p> <p>4 date of this memo, the 15th of September, that</p> <p>5 Barclays was intending to buy both the U.S.-based</p> <p>6 FCM and the European-based business?</p> <p>7 MS. BLOOMER: Object to the form of</p> <p>8 the question.</p> <p>9 A That needs a little clarification. I</p> <p>10 think that, again in my words, I think that the</p> <p>11 transaction was to take over all of the</p> <p>12 futures-based businesses of LBI and its</p> <p>13 affiliates. So, it would embrace the futures</p> <p>14 customers that were -- I am pausing here because I</p> <p>15 think that the transaction that was being</p> <p>16 discussed was -- on the 15th was really about</p> <p>17 LBI's business.</p> <p>18 It interacted with its affiliates in</p> <p>19 a variety of ways, and some of those affiliate</p> <p>20 customers ultimately could have come over to LBI,</p> <p>21 but -- to Barclays. But I think that the deal</p> <p>22 that I -- as I am now thinking about it, was to</p> <p>23 taking over the LBI futures business, and to the</p> <p>24 extent that there were other businesses, that was</p> <p>25 really not part of the transaction.</p>	<p style="text-align: right;">Page 147</p> <p>1 Confidential - K. Raisler</p> <p>2 Q Okay, thank you.</p> <p>3 Do you recall any discussion between</p> <p>4 Barclays and Lehman at the meeting on the 15th or</p> <p>5 at any time that week about the creditworthiness</p> <p>6 of Lehman's clients?</p> <p>7 A Yes. I think that there were some</p> <p>8 again high-level discussions about high-quality</p> <p>9 clients.</p> <p>10 Q Can you be a little more specific</p> <p>11 about what those discussion were?</p> <p>12 A I think there were some clients who</p> <p>13 were identified who would have been known to us,</p> <p>14 both Barclays and myself, as important or premier</p> <p>15 institutional users in the market.</p> <p>16 Q Do you recall any discussions that</p> <p>17 week, Mr. Raisler, about any clients that would</p> <p>18 not be considered premier or might be considered a</p> <p>19 credit risk for Barclays to take on as customers?</p> <p>20 MS. BLOOMER: Objection to form.</p> <p>21 A I think during the course of the week</p> <p>22 of September 15th, a lot of blue chip</p> <p>23 institutional customers became credit risks, so,</p> <p>24 it was a chaotic time period, and Lehman itself</p> <p>25 might have been considered blue chip even a week</p>
<p style="text-align: right;">Page 148</p> <p>1 Confidential - K. Raisler</p> <p>2 before, so I don't know that there was any real</p> <p>3 security or feeling that any individual client was</p> <p>4 in fact secure during this time period. And by</p> <p>5 secure, I mean creditworthy.</p> <p>6 Q Under the heading transaction</p> <p>7 benefits and risks, do you see there is a -- three</p> <p>8 paragraphs down, the words "key risk" appear. Do</p> <p>9 you see that, Mr. Raisler?</p> <p>10 A Yes.</p> <p>11 Q It says, "Loss of key clients due to</p> <p>12 inability to execute expedient transactions." Do</p> <p>13 you see that?</p> <p>14 A Yes.</p> <p>15 Q At any of the meetings that you were</p> <p>16 present in, between Lehman and Barclays, were any</p> <p>17 other risks to Barclays identified?</p> <p>18 A Yes. The financial risk of</p> <p>19 non-performance was what we were spending almost</p> <p>20 all of our time on. That could be a whole range</p> <p>21 of non-performances, but as we tried to get a</p> <p>22 handle on the accounts and the customers and the</p> <p>23 proprietary positions, the risks that they</p> <p>24 presented in a volatile chaotic market were the</p> <p>25 center risks that I would have described</p>	<p style="text-align: right;">Page 149</p> <p>1 Confidential - K. Raisler</p> <p>2 discussing during that week.</p> <p>3 Q In your last answer you mean</p> <p>4 non-performance by whom?</p> <p>5 A Non-performance by the Lehman</p> <p>6 proprietary account positions, that is not having</p> <p>7 sufficient capital to meet those losing positions,</p> <p>8 and non-performance by individual customers on</p> <p>9 their obligations as futures customers.</p> <p>10 Q Turning the page, sir, there is --</p> <p>11 the second paragraph, number two, is headed</p> <p>12 "Additional Capital Requirements." Do you see</p> <p>13 that?</p> <p>14 A Yes.</p> <p>15 Q Did you have any understanding, sir,</p> <p>16 at any time whether or not Barclays required its</p> <p>17 acquisition of the futures business of Lehman to</p> <p>18 be capital accretive?</p> <p>19 A I am sorry. I'm going to have to ask</p> <p>20 you to define what you mean by "capital</p> <p>21 accretive."</p> <p>22 Q Do you have any understanding of what</p> <p>23 that term means, sir?</p> <p>24 MS. BLOOMER: Objection to form.</p> <p>25 A I would be guessing.</p>

Page 150	Page 151
<p>1 Confidential - K. Raisler</p> <p>2 Q You would be guessing as to what it</p> <p>3 means to you?</p> <p>4 A Right. I didn't -- my accounting</p> <p>5 classes are far behind me, and I wouldn't want to</p> <p>6 be wrong in making a wrong assumption about what</p> <p>7 you mean there, so.</p> <p>8 Q Do you see under the second heading</p> <p>9 the last sentence says, "We require senior</p> <p>10 management approval related to such a capital</p> <p>11 increase"?</p> <p>12 A Correct.</p> <p>13 Q Did you have any discussions with</p> <p>14 anybody in the week of the 15th through the</p> <p>15 closing of the transaction, sir, that Barclays be</p> <p>16 required to increase their capital to take on the</p> <p>17 futures business?</p> <p>18 MS. BLOOMER: I object to the</p> <p>19 question and instruct the witness not to</p> <p>20 disclose the substance of communications</p> <p>21 that were not held in the presence of Lehman</p> <p>22 or any other third party.</p> <p>23 A I think from the earliest meetings</p> <p>24 with Lehman and Barclays, it was understood that</p> <p>25 additional capital would be required.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q What is the basis for that answer,</p> <p>3 sir?</p> <p>4 A The goal of the transaction was</p> <p>5 substantially to increase the futures business of</p> <p>6 Barclays. That was the opportunity that the</p> <p>7 business people saw. And if are you going to</p> <p>8 substantially increase your business, then that</p> <p>9 means that you have more customer segregated funds</p> <p>10 and therefore you need more capital.</p> <p>11 Q Were you ever involved, Mr. Raisler,</p> <p>12 in any discussions about whether or not Lehman's</p> <p>13 own proprietary assets in the futures business,</p> <p>14 including but not limited to the buffer funds that</p> <p>15 you described before in the customer seg and</p> <p>16 secured accounts, would impact the need for</p> <p>17 additional capital?</p> <p>18 MS. BLOOMER: Objection to form.</p> <p>19 A None that I recall.</p> <p>20 Q Okay. That is all I have for that</p> <p>21 exhibit. Thanks.</p> <p>22 The letters, Mr. Raisler, that you</p> <p>23 wrote to the CFTC that we looked at this morning,</p> <p>24 do you remember those letters?</p> <p>25 A Yes.</p>
Page 152	Page 153
<p>1 Confidential - K. Raisler</p> <p>2 Q I think I had marked them as 660-A</p> <p>3 and 661-A.</p> <p>4 A I think 661 is the letter back. We</p> <p>5 had 659-A and 660-A were the letters to, and 661-A</p> <p>6 was the letter back.</p> <p>7 Q Thank you, appreciate that.</p> <p>8 Did you get approval from Barclays</p> <p>9 before you sent those letters to the CFTC?</p> <p>10 MS. BLOOMER: Objection to form.</p> <p>11 You can answer to the extent you</p> <p>12 don't disclose the substance of your</p> <p>13 discussions.</p> <p>14 A Yes.</p> <p>15 Q Was Barclays aware of the</p> <p>16 representations from Lehman upon which you relied</p> <p>17 in writing those letters, sir? And particularly,</p> <p>18 I am directing this question to the</p> <p>19 representations as to the sufficient segregated</p> <p>20 and secured amount funds that we discussed</p> <p>21 earlier.</p> <p>22 MS. BLOOMER: Objection, lacks</p> <p>23 foundation and same privilege objection and</p> <p>24 instruction.</p> <p>25 A Again, with the caveats that we put</p>	<p>1 Confidential - K. Raisler</p> <p>2 on those representations from our discussion this</p> <p>3 morning, the answer is yes.</p> <p>4 Q I am handing you, Mr. Raisler, a copy</p> <p>5 of the asset purchase agreement in this matter</p> <p>6 that has been marked previously as Exhibit 1.</p> <p>7 Have you seen this document before,</p> <p>8 sir?</p> <p>9 A Yes.</p> <p>10 Q When was the first time you saw this</p> <p>11 document?</p> <p>12 A I don't recall, but it was</p> <p>13 substantially after it was signed.</p> <p>14 Q Was it after the transaction closed</p> <p>15 on September 22nd, 2008?</p> <p>16 A Yes. I may have had it sent to me by</p> <p>17 somebody during the course of the dealings, but I</p> <p>18 don't recall ever having sat down and read it for</p> <p>19 months after.</p> <p>20 Q And you were not involved in the</p> <p>21 negotiation of this document?</p> <p>22 A That is correct.</p> <p>23 Q And have you spoken with anybody who</p> <p>24 was involved in the negotiation of this document,</p> <p>25 specifically about the effect of this document, if</p>

Page 154	Page 155
<p>1 Confidential - K. Raisler</p> <p>2 any, on Barclays' acquisition of Lehman's futures</p> <p>3 business?</p> <p>4 MS. BLOOMER: Objection, and I</p> <p>5 instruct the witness not to disclose the</p> <p>6 substance of discussions with Barclays or</p> <p>7 its other representatives.</p> <p>8 A The answer is no.</p> <p>9 Q Is it safe to say, sir, then that you</p> <p>10 don't have a view whether or not this document</p> <p>11 conveys to Barclays any particular asset</p> <p>12 associated with Lehman's futures business?</p> <p>13 MS. BLOOMER: Objection to form of</p> <p>14 the question.</p> <p>15 A Actually, I don't have a view on this</p> <p>16 document at all.</p> <p>17 Q That gets us done very quickly.</p> <p>18 A Right.</p> <p>19 Q Mr. Raisler, I am handing you what's</p> <p>20 been marked as Exhibit 25 previously in this</p> <p>21 matter, which is the clarification letter. And</p> <p>22 you will not be surprised to learn that I have a</p> <p>23 similar set of questions with respect to this</p> <p>24 document as I did --</p> <p>25 A You are not going to be surprised to</p>	<p>1 Confidential - K. Raisler</p> <p>2 hear the same answers then; right?</p> <p>3 Q I will not.</p> <p>4 When was the first time you saw this</p> <p>5 document, sir?</p> <p>6 A I might have seen it the same time I</p> <p>7 saw the asset purchase agreement, which would have</p> <p>8 been sometime substantially after the transaction</p> <p>9 closed.</p> <p>10 Q Did anyone consult with you,</p> <p>11 Mr. Raisler, to your knowledge, during the</p> <p>12 drafting of this agreement?</p> <p>13 MS. BLOOMER: Objection.</p> <p>14 MR. LACY: About the agreement?</p> <p>15 MR. OXFORD: Yes.</p> <p>16 A No.</p> <p>17 Q And just so we are clear, this</p> <p>18 clarification letter is dated the 20th of</p> <p>19 September, but it was executed on or about the</p> <p>20 22nd of September, 2008. That doesn't change your</p> <p>21 last answer, does it?</p> <p>22 A No, it does not.</p> <p>23 MS. BLOOMER: Objection to the form</p> <p>24 of that question.</p> <p>25 Q And conversely, you don't have an</p>
Page 156	Page 157
<p>1 Confidential - K. Raisler</p> <p>2 opinion as to whether or not this document</p> <p>3 transfers to Barclays any particular asset that</p> <p>4 relates in any way to Lehman's futures business?</p> <p>5 MS. BLOOMER: Object to the form.</p> <p>6 A As with my comment on the asset</p> <p>7 purchase agreement, I don't have a view on the</p> <p>8 document at all.</p> <p>9 Q Okay, thank you.</p> <p>10 Mr. Raisler, I'm handing you the</p> <p>11 transfer and assumption agreement in this case</p> <p>12 previously marked as Exhibit 51. If you could</p> <p>13 just take a moment to review that document and let</p> <p>14 me know when you are done, sir.</p> <p>15 MS. BLOOMER: Do you know whose</p> <p>16 handwriting is on that first page?</p> <p>17 MR. OXFORD: The underlining?</p> <p>18 MS. BLOOMER: Yes.</p> <p>19 MR. OXFORD: I do not. To the best</p> <p>20 of my knowledge, this is the execution copy.</p> <p>21 A Okay.</p> <p>22 Q You have seen this document before,</p> <p>23 sir?</p> <p>24 A Yes, I have.</p> <p>25 Q When was the first time you saw this</p>	<p>1 Confidential - K. Raisler</p> <p>2 document?</p> <p>3 A This document I might have seen as</p> <p>4 early as Friday the 19th in some kind of draft</p> <p>5 form.</p> <p>6 Q How is it you came to see a draft of</p> <p>7 it?</p> <p>8 A I think as I --</p> <p>9 Q Of this document, sir.</p> <p>10 A I'm sorry.</p> <p>11 I think as I testified earlier, I had</p> <p>12 been in contact with OCC, and they had expressed</p> <p>13 concerns about their security around the Lehman</p> <p>14 accounts over the Friday settlement and the</p> <p>15 weekend. And as a result, there were discussions</p> <p>16 about creating some degree of certainty for OCC,</p> <p>17 and while I didn't draft, and to my best</p> <p>18 recollection didn't comment, on this agreement, I</p> <p>19 was made aware of it, and it was the plan to</p> <p>20 address OCC's concerns.</p> <p>21 Q To your understanding, Mr. Raisler,</p> <p>22 does this document govern the futures that are</p> <p>23 cleared through the OCC?</p> <p>24 A Yeah, I testified this morning that I</p> <p>25 didn't think so. Looking at it now, and I don't</p>

Page 158	Page 159
<p>1 Confidential - K. Raisler</p> <p>2 remember -- the definition here is the account,</p> <p>3 and it references number 74, 84 and 273. I think</p> <p>4 that -- and my recollection is a little rusty on</p> <p>5 this -- I think that 84 might have been the</p> <p>6 futures account, in which case I would amend my</p> <p>7 testimony from this morning to say that this</p> <p>8 agreement does cover the futures account.</p> <p>9 The reason I didn't or I wasn't clear</p> <p>10 about that this morning is that we did not and</p> <p>11 were not aware as of the 19th that there were</p> <p>12 futures, at least to the best of my recollection.</p> <p>13 Q Are the futures, Mr. Raisler, that</p> <p>14 are cleared through the OCC, are those cleared</p> <p>15 differently to futures cleared through an</p> <p>16 organization like the CME?</p> <p>17 A No. They are cleared -- there is a</p> <p>18 division of the OCC that is recognized as a</p> <p>19 derivatives clearing organization that is</p> <p>20 permitted by the CFTC to execute clearing</p> <p>21 activities and clearing functions, and its</p> <p>22 responsibilities are identical to any other</p> <p>23 futures clearing house.</p> <p>24 It is important, though, not to</p> <p>25 confuse that activity with the clearing that OCC</p>	<p>1 Confidential - K. Raisler</p> <p>2 does for equity options, which is done through a</p> <p>3 different part of OCC. I mean it's certainly --</p> <p>4 on reflecting on my earlier comment, I apologize,</p> <p>5 it would certainly make sense that the transfer</p> <p>6 and assumption agreement would cover futures,</p> <p>7 because presumably it would cover everything, all</p> <p>8 of the obligations that may be at risk at the OCC.</p> <p>9 The reason I think -- I didn't think</p> <p>10 it -- the reason I testified that it may not have</p> <p>11 is just because I didn't know that there were any</p> <p>12 futures at the time this agreement was entered</p> <p>13 into.</p> <p>14 Q That is all I have for that document,</p> <p>15 sir.</p> <p>16 Mr. Raisler, do you recall any</p> <p>17 discussions with the CFTC as to the existence or</p> <p>18 otherwise of excess seg and secured funds in</p> <p>19 Lehman's accounts over and above the required</p> <p>20 minimums in those accounts?</p> <p>21 MS. BLOOMER: Object to -- actually,</p> <p>22 I object to the form of the question.</p> <p>23 MR. OXFORD: I won't object to the</p> <p>24 form of that objection.</p> <p>25 A There was never any discussion with</p>
Page 160	Page 161
<p>1 Confidential - K. Raisler</p> <p>2 the CFTC about that, that I recall.</p> <p>3 Q Were you the only person from</p> <p>4 Sullivan & Cromwell who was liaison with the CFTC</p> <p>5 or was Mr. Gilberg also involved?</p> <p>6 A Mr. Gilberg was also involved, and</p> <p>7 there could have been others as well, but I would</p> <p>8 have been aware of what the communications were,</p> <p>9 and I would be confident in saying it was never</p> <p>10 discussed.</p> <p>11 I should just caveat that answer by</p> <p>12 saying that the way in which you characterize what</p> <p>13 the account is and excess and words like that need</p> <p>14 to be qualified by the answers I have given in</p> <p>15 testimony I gave this morning about what that</p> <p>16 means.</p> <p>17 Q I understand.</p> <p>18 In your declaration, sir, you</p> <p>19 describe in paragraph three in the last sentence,</p> <p>20 that what you believe was the general</p> <p>21 understanding of all participants was in relation</p> <p>22 to what part of the LBI futures business was going</p> <p>23 to be transferred to Barclays.</p> <p>24 A Correct.</p> <p>25 MS. BLOOMER: I object to the form of</p>	<p>1 Confidential - K. Raisler</p> <p>2 that last question to the extent it was a</p> <p>3 question.</p> <p>4 MR. OXFORD: It was a question. I</p> <p>5 think I got a yes.</p> <p>6 MS. BLOOMER: I object to the form of</p> <p>7 the question, vague use of the term "what</p> <p>8 part of the business."</p> <p>9 BY MR. OXFORD:</p> <p>10 Q The people who were in your meetings,</p> <p>11 Mr. Raisler, the ones that you describe in your</p> <p>12 declaration, were not the people who were</p> <p>13 responsible for negotiating the business terms of</p> <p>14 this transaction between Lehman and Barclays</p> <p>15 insofar as it pertains to the futures business;</p> <p>16 correct?</p> <p>17 MS. BLOOMER: Object to the form.</p> <p>18 A That was my understanding, correct.</p> <p>19 Q Are you aware who, if anyone, on</p> <p>20 behalf of Lehman actually agreed to transfer the</p> <p>21 business, the futures business, as you describe in</p> <p>22 paragraph three of your declaration?</p> <p>23 A Not in name, no.</p> <p>24 Q In any other manner are you able to</p> <p>25 identify such a person for me?</p>

Page 162	Page 163
<p>1 Confidential - K. Raisler</p> <p>2 MS. BLOOMER: Objection to form.</p> <p>3 A I can't identify an individual. In</p> <p>4 that sense I don't know that I can help you out.</p> <p>5 Q Is there some other unit that is</p> <p>6 larger than an individual that you can identify</p> <p>7 for me who you believe agreed to the transaction</p> <p>8 that you described in the last sentence of</p> <p>9 paragraph three of your declaration?</p> <p>10 A Well, I mean to the extent that the</p> <p>11 team that I was working with was implementing a</p> <p>12 strategy to effectuate this proposal, it certainly</p> <p>13 was the assumption that Lehman, LBI, Inc., the</p> <p>14 trustee, people responsible were the ones who were</p> <p>15 going to allow us to do that. Otherwise, we were</p> <p>16 wasting a lot of time. That is how I came to that</p> <p>17 conclusion.</p> <p>18 Q But that conclusion is not based on a</p> <p>19 conversation with anybody who represents or had</p> <p>20 authority to negotiate on behalf of LBI, is it?</p> <p>21 MS. BLOOMER: Objection to form and</p> <p>22 foundation.</p> <p>23 A I don't think it -- it did not</p> <p>24 result -- it did not come from a conversation with</p> <p>25 anybody who had authority to negotiate for LBI.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q And has anyone identified to you,</p> <p>3 Mr. Raisler, just to close this line of</p> <p>4 questioning, whether the deal that you described,</p> <p>5 as your understanding based on what you say in</p> <p>6 paragraph three of your declaration, was actually</p> <p>7 agreed to by anybody on behalf of LP?</p> <p>8 MS. BLOOMER: Object to form of the</p> <p>9 question and instruct the witness --</p> <p>10 MR. OXFORD: Let's try that one a</p> <p>11 again.</p> <p>12 Q You told me that you don't have an</p> <p>13 understanding based on any conversation with</p> <p>14 anybody as to what the precise business terms of</p> <p>15 the deal were as agreed to by LBI; correct?</p> <p>16 MS. BLOOMER: Objection to the</p> <p>17 characterization of the testimony.</p> <p>18 A I am not sure that's what I would</p> <p>19 say. I think the best answer I can give you, at</p> <p>20 the risk of some repetition, is that there was a</p> <p>21 team of people at Barclays who spent the week</p> <p>22 meeting with people at LBI to implement a transfer</p> <p>23 of assets and interests consistent with paragraph</p> <p>24 three.</p> <p>25 Each of us were under the clear</p>
Page 164	Page 165
<p>1 Confidential - K. Raisler</p> <p>2 understanding, impression, whatever other word you</p> <p>3 want to use, that this was the deal that LBI was</p> <p>4 proposing to enter into with Barclays. It was not</p> <p>5 as a result of a conversation with anybody</p> <p>6 negotiating that deal, but the word from on high</p> <p>7 came down, and this is what the people in the</p> <p>8 trenches were doing. And I was there in the</p> <p>9 trenches.</p> <p>10 Q I understand, thank you. I think I</p> <p>11 have your testimony on that.</p> <p>12 A Right.</p> <p>13 Q Did you have any discussions with</p> <p>14 anyone, Mr. Raisler, at any time about the need</p> <p>15 for an accounting as to -- withdrawn.</p> <p>16 Did you have any discussion with</p> <p>17 anyone at any time, Mr. Raisler, about whether</p> <p>18 Barclays needed to keep track of any customer seg</p> <p>19 and secured funds for monies in those accounts</p> <p>20 that belonged to LBI?</p> <p>21 MS. BLOOMER: Object to the form of</p> <p>22 the question, and an instruction not to</p> <p>23 answer to the extent it requires you to</p> <p>24 disclose the communications you have had</p> <p>25 with Barclays.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I confess I lost that question</p> <p>3 somewhere in the middle.</p> <p>4 Q I think the question might have too.</p> <p>5 Let me try it this way: You had</p> <p>6 discussions, Mr. Raisler, that you testified to</p> <p>7 earlier on about the difficulties in transferring</p> <p>8 the customer segregated and secured funds to</p> <p>9 Barclays; correct?</p> <p>10 A That is correct, yes.</p> <p>11 Q I believe you also testified that you</p> <p>12 believed there were monies in those segregated and</p> <p>13 secured accounts that exceeded the obligations to</p> <p>14 customers that Barclays would be taking</p> <p>15 responsibility for?</p> <p>16 MS. BLOOMER: Objection,</p> <p>17 mischaracterizes the testimony.</p> <p>18 A I'm struggling a little bit with</p> <p>19 words likely "responsibility for." If I can</p> <p>20 potentially clarify.</p> <p>21 Q Please.</p> <p>22 A It was my understanding that all of</p> <p>23 those funds were both domestically and to the</p> <p>24 extent there were funds outside of the U.S., were</p> <p>25 to come over to Barclays. That was my</p>

<p style="text-align: right;">Page 166</p> <p>1 Confidential - K. Raisler</p> <p>2 understanding of the transaction.</p> <p>3 Q And was it also your understanding of</p> <p>4 the transaction that all of those funds would come</p> <p>5 over to Barclays even if there was -- there were</p> <p>6 more customer seg and secured funds than were --</p> <p>7 there were obligations to customers that Barclays</p> <p>8 was taking responsibility for?</p> <p>9 A Yes.</p> <p>10 Q That is the buffer that we talked</p> <p>11 about earlier; correct?</p> <p>12 MS. BLOOMER: Objection to form.</p> <p>13 A It could be a variety of things, one</p> <p>14 of which I guess could be something like a buffer,</p> <p>15 but the point I would make is that as we looked at</p> <p>16 the transaction, in the week of September 15th,</p> <p>17 all of those assets that were in segregated and</p> <p>18 secured accounts were to be transferred to</p> <p>19 Barclays along with all of the positions that were</p> <p>20 represented in those various accounts; in</p> <p>21 addition, the proprietary positions and the assets</p> <p>22 that were supporting those proprietary positions.</p> <p>23 That was my understanding.</p> <p>24 Q Did you ever have any discussions</p> <p>25 with anyone, including the trustee's office, about</p>	<p style="text-align: right;">Page 167</p> <p>1 Confidential - K. Raisler</p> <p>2 whether any part of the customer seg and secured</p> <p>3 funds might be returned to the LBI estate?</p> <p>4 A Absolutely not.</p> <p>5 Q Did you ever consider whether or not,</p> <p>6 independent of any conversations you had with the</p> <p>7 trustee or anyone representing the trustee, that</p> <p>8 there might be a need for any part of the customer</p> <p>9 segregated and secured amount funds to be returned</p> <p>10 to the LBI estate?</p> <p>11 MS. BLOOMER: Objection to form.</p> <p>12 A I sorry. I am not sure that is a</p> <p>13 different question from the last one.</p> <p>14 MR. LACY: He's asking about your</p> <p>15 understanding instead of your conversations.</p> <p>16</p> <p>17 Q Rob is right.</p> <p>18 A Okay. No, I did not.</p> <p>19 (Exhibit 662-A marked for</p> <p>20 identification as of this date.)</p> <p>21</p> <p>22 Q I am handing you, Mr. Raisler, a</p> <p>23 document that has been marked as Exhibit 662.</p> <p>24 MR. LACY: 662-A, I hope.</p> <p>25 MR. OXFORD: You are keeping me</p>
<p style="text-align: right;">Page 168</p> <p>1 Confidential - K. Raisler</p> <p>2 honest today.</p> <p>3 MS. BLOOMER: I'm going to object.</p> <p>4 We might have to call this document back,</p> <p>5 Neil. It appears that it contains contents</p> <p>6 of communications between Barclays and its</p> <p>7 lawyers. So, I would like a little bit of a</p> <p>8 break to consider this before we go into</p> <p>9 questions about it.</p> <p>10 MR. OXFORD: Okay. Do you want to</p> <p>11 take five minutes?</p> <p>12 MS. BLOOMER: Yes, please.</p> <p>13 (Recess taken.)</p> <p>14 MR. OXFORD: Ready to go back on?</p> <p>15 MS. BLOOMER: For the record,</p> <p>16 Barclays inadvertently produced a privileged</p> <p>17 document, Bates number BCIEXS 00116806</p> <p>18 through 07. And we are going to be formally</p> <p>19 exercising our clawback rights under the</p> <p>20 established process after the deposition,</p> <p>21 but effective immediately, would ask that no</p> <p>22 further reference be made to the document by</p> <p>23 the other side or any other adverse party.</p> <p>24 MR. OXFORD: That is fine, Trish. We</p> <p>25 will review your request when we receive it,</p>	<p style="text-align: right;">Page 169</p> <p>1 Confidential - K. Raisler</p> <p>2 and I won't make any further reference to</p> <p>3 that document in this deposition.</p> <p>4 Q Mr. Raisler, independent of the</p> <p>5 document that I had marked as 662-A, I just want</p> <p>6 to make sure that I have your testimony that you</p> <p>7 never considered -- withdrawn.</p> <p>8 I just want to make sure that</p> <p>9 independent of 662-A, I have your testimony as to</p> <p>10 whether or not you ever considered that there be a</p> <p>11 need for an accounting or the possible return of</p> <p>12 some portion of the customer segregated and</p> <p>13 secured funds that were transferred to Barclays as</p> <p>14 part of Lehman's futures business.</p> <p>15 MR. LACY: I'm sorry, hold on a</p> <p>16 second.</p> <p>17 I take it you mean a return to the</p> <p>18 estate, not to a customer.</p> <p>19 MR. OXFORD: Yes.</p> <p>20 MR. LACY: Okay.</p> <p>21 A As I previously testified, I was not</p> <p>22 aware of any consideration being given to</p> <p>23 returning any of those funds, which were part of</p> <p>24 the transaction and part of the transfer, as I</p> <p>25 understood it.</p>

Page 170	Page 171
<p>1 Confidential - K. Raisler</p> <p>2 MR. OXFORD: Can we go off for a</p> <p>3 second.</p> <p>4 (Discussion held off the record.)</p> <p>5 MR. LACY: Back on the record.</p> <p>6 Mr. Oxford has shown me a document</p> <p>7 that was produced by Sullivan & Cromwell in</p> <p>8 response to a subpoena in this case, number</p> <p>9 SC 3897 through 3905.</p> <p>10 The top half of the first page of</p> <p>11 this is privileged. It was produced</p> <p>12 inadvertently, pursuant to, I think it's the</p> <p>13 protective order and provision concerning</p> <p>14 the inadvertent disclosure, we request the</p> <p>15 return of the top half of the first page of</p> <p>16 this document.</p> <p>17 No privilege is claimed with respect</p> <p>18 to the bottom two e-mails or to the</p> <p>19 attachment, so if you want to go ahead and</p> <p>20 ask about the attachment, feel free to go</p> <p>21 ahead and ask about the attachment.</p> <p>22 MR. OXFORD: You are claiming</p> <p>23 privilege on the most interesting part of</p> <p>24 the e-mail, so I will hold my questions for</p> <p>25 now. Thank you.</p>	<p>1 Confidential - K. Raisler</p> <p>2 BY MR. OXFORD:</p> <p>3 Q Just going back to the last question</p> <p>4 and answer before we broke, Mr. Raisler, I</p> <p>5 realized in reviewing the record I asked a</p> <p>6 compound question, so I want to break it up.</p> <p>7 Did you ever consider the need for an</p> <p>8 accounting with respect to Barclays' acquisition</p> <p>9 of Lehman's customer segregated and secured</p> <p>10 accounts?</p> <p>11 MS. BLOOMER: I object to the form of</p> <p>12 the question, the undefined vague use of the</p> <p>13 term "accounting."</p> <p>14 A I am not sure what is meant by the</p> <p>15 term "accounting," although I am inclined to think</p> <p>16 that I didn't.</p> <p>17 Q In my question I mean that the</p> <p>18 contents of the customer segregated and secured</p> <p>19 accounts had to be tracked in case there was a</p> <p>20 need to return any of those customer segregated</p> <p>21 and secured funds to the Lehman estate.</p> <p>22 A No.</p> <p>23 MS. BLOOMER: Objection to form, I</p> <p>24 think.</p> <p>25 (Exhibit 663-A marked for</p>
Page 172	Page 173
<p>1 Confidential - K. Raisler</p> <p>2 identification as of this date.)</p> <p>3 Q Mr. Raisler, I am handing you what I</p> <p>4 have marked as Exhibit 663-A, which I will</p> <p>5 identify for the record as an e-mail with the</p> <p>6 Bates number SC 00003451 and an attachment that</p> <p>7 goes through 3453.</p> <p>8 If you could take a moment to review</p> <p>9 that and tell me if you have seen it before.</p> <p>10 A Yes, I am familiar with this.</p> <p>11 Q How is it you are familiar with it,</p> <p>12 sir?</p> <p>13 A This was part of a discussion that I</p> <p>14 was involved in with the OCC that actually dates</p> <p>15 all the way back to the transfer and assumption</p> <p>16 agreement as OC -- as Barclay's was trying to</p> <p>17 recover assets owed to it pursuant to the terms of</p> <p>18 that agreement.</p> <p>19 Q Did Barclays, to your knowledge, ask</p> <p>20 the OCC to write this letter?</p> <p>21 A My best recollection is they, they</p> <p>22 proposed to write it. We were in discussions with</p> <p>23 them as they were trying to figure out what to do</p> <p>24 with these assets, and they were sort of advancing</p> <p>25 this in the interest of sorting that out.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Did you discuss this request with JPM</p> <p>3 Chase at any time, sir?</p> <p>4 A I believe there were some discussions</p> <p>5 with JPMC during the course of this.</p> <p>6 Q Were there discussions with JPM Chase</p> <p>7 themselves or counsel for Chase?</p> <p>8 A I'm sure it would have been counsel.</p> <p>9 I don't know whether it would have been inside</p> <p>10 counsel or outside counsel.</p> <p>11 Q And did you comment on this letter</p> <p>12 before it was sent, sir?</p> <p>13 MS. BLOOMER: Objection. Before it</p> <p>14 was sent to whom?</p> <p>15 MR. OXFORD: That's a good objection,</p> <p>16 Trish. Thank you.</p> <p>17 Q Did you -- let me try it this way:</p> <p>18 Did you see a draft of this letter prior to the</p> <p>19 November 4th draft that appears to be sent to you</p> <p>20 by Jim McDaniel on the 6th of November?</p> <p>21 A I believe so. I don't recall</p> <p>22 precisely, but I believe so.</p> <p>23 Q Do you believe that draft was sent to</p> <p>24 you by Mr. McDaniel?</p> <p>25 A Yes. I'm sorry to be -- the word</p>

Page 174	Page 175
<p>1 Confidential - K. Raisler</p> <p>2 "that" in that question referring to the earlier</p> <p>3 draft?</p> <p>4 Q The earlier draft, yes.</p> <p>5 A Yes.</p> <p>6 Q Did you provide comments on the</p> <p>7 earlier draft provided by Mr. McDaniel?</p> <p>8 A I don't have a precise recollection,</p> <p>9 but I might have been the one who referred him to</p> <p>10 JPMC to make sure that their thoughts and</p> <p>11 considerations were taken into account.</p> <p>12 Q Did you provide Mr. McDaniel comments</p> <p>13 on the draft that is attached to the e-mail that</p> <p>14 we are looking at, 663-A?</p> <p>15 A I don't believe so. I think that</p> <p>16 this -- to my best recollection, this form looks</p> <p>17 pretty final to me.</p> <p>18 Q That is all I have for that.</p> <p>19 I make no promises, but this may be</p> <p>20 my last document. I think it is.</p> <p>21 A Okay.</p> <p>22 (Exhibit 664-A marked for</p> <p>23 identification as of this date.)</p> <p>24 Q Mr. Raisler, I have handed you a</p> <p>25 document that I have marked as 664-A, which is a</p>	<p>1 Confidential - K. Raisler</p> <p>2 Friday the 19th, 3 p.m. e-mail, with the subject</p> <p>3 "Domestic and Foreign Calculations," and two</p> <p>4 attachments.</p> <p>5 If you could take just a moment and</p> <p>6 review it and let me know whether you have seen</p> <p>7 the e-mail or the attachments before.</p> <p>8 A I don't believe that I have seen this</p> <p>9 before. Or at least I don't recall seeing it</p> <p>10 before.</p> <p>11 Q Are you able to tell, just from your</p> <p>12 review of the documents -- I understand that you</p> <p>13 don't, sitting here today, think you have seen</p> <p>14 this before. You don't recall seeing it before.</p> <p>15 Are you able to tell me what the two</p> <p>16 attachments are?</p> <p>17 MR. LACY: Object for lack of</p> <p>18 foundation.</p> <p>19 A I am not familiar with this form of</p> <p>20 document. Obviously I could read the subject line</p> <p>21 and tell you what the subject line says, but as</p> <p>22 far as how the math works or anything like that, I</p> <p>23 can't, I can't be helpful.</p> <p>24 In fact, I can't -- on the second</p> <p>25 document, I can't make the math work, so I am not</p>
Page 176	Page 177
<p>1 Confidential - K. Raisler</p> <p>2 really sure I follow it.</p> <p>3 Q You testified before lunch, sir,</p> <p>4 about the interests that certain exchanges and</p> <p>5 clearing organizations have in segregated and</p> <p>6 secured accounts. Do you remember that testimony?</p> <p>7 A Yes, I think it was sort of muddled,</p> <p>8 but yes.</p> <p>9 Q If it were muddled, I am not sure it</p> <p>10 was the fault of the witness, rather it's the</p> <p>11 questioner.</p> <p>12 Is it your understanding, sir, that</p> <p>13 an organization such as the CME would have a lien</p> <p>14 over all assets in Lehman's, that is LBI's</p> <p>15 segregated customer bank account?</p> <p>16 MR. LACY: Object to the form of the</p> <p>17 question.</p> <p>18 A There would be a form of a lien that</p> <p>19 the CME clearing house would have. It doesn't</p> <p>20 really accord very well with the traditional UCC</p> <p>21 security interest type concept. So I think it can</p> <p>22 be confusing.</p> <p>23 But the CME would say that to the</p> <p>24 extent that the customer or house accounts</p> <p>25 respectively of any clearing member of the</p>	<p>1 Confidential - K. Raisler</p> <p>2 exchange are needed to meet the obligations of</p> <p>3 those respective accounts, they would have a call</p> <p>4 on those assets for that purpose, and they would</p> <p>5 have the ability, as we discussed this morning, to</p> <p>6 reach into a segregated account even at a non-CME</p> <p>7 clearing house bank location to use those funds to</p> <p>8 meet margin calls.</p> <p>9 So in that sense, I think it probably</p> <p>10 would be equivalent to, although they don't</p> <p>11 usually use the term "lien."</p> <p>12 MS. BLOOMER: Neil, I don't mean to</p> <p>13 interrupt your questioning, but do you know</p> <p>14 whose document this is? I mean I don't know</p> <p>15 who the sender is, and I don't see any Bates</p> <p>16 number on it. I am just wondering who --</p> <p>17 whose document this is. Is it an LBI</p> <p>18 document? Is it a trustee document?</p> <p>19 MR. OXFORD: I think it was created</p> <p>20 on Friday afternoon, September 19th, prior</p> <p>21 to the appointment of the SIPA trustee.</p> <p>22 MS. BLOOMER: Okay. So it's not a</p> <p>23 trustee document.</p> <p>24 MR. OXFORD: It's not created by the</p> <p>25 trustee.</p>

Page 178	Page 179
<p>1 Confidential - K. Raisler</p> <p>2 MS. BLOOMER: Do you know who Bianca</p> <p>3 Castedo is?</p> <p>4 MR. OXFORD: Yes, I believe she was</p> <p>5 formerly employed by Lehman, and I believe</p> <p>6 she is currently employed by your client.</p> <p>7 MS. BLOOMER: Okay. Thank you.</p> <p>8 This document hasn't been produced by</p> <p>9 anyone at all in the litigation, I take it.</p> <p>10 MR. OXFORD: Not to my knowledge.</p> <p>11 Mr. Raisler, I don't think I have any</p> <p>12 further questions for you at this time. I</p> <p>13 don't know if counsel for any other party</p> <p>14 does.</p> <p>15 MS. CRAWFORD: The debtor doesn't.</p> <p>16 MR. KAY: No questions from the</p> <p>17 committee.</p> <p>18 EXAMINATION</p> <p>19 BY MR. LACY:</p> <p>20 Q Mr. Raisler, you testified early this</p> <p>21 morning about some uncertainty created by the fact</p> <p>22 that the customer positions at a clearing house</p> <p>23 are aggregated.</p> <p>24 Do you remember that.</p> <p>25 A Yes, I do.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Was there a -- as part of this due</p> <p>3 diligence that went on during the week of the</p> <p>4 15th, was there a similar issue relating to the</p> <p>5 house accounts?</p> <p>6 A Yes. As I indicated this morning, at</p> <p>7 the exchange level, they would have positions, and</p> <p>8 they would have positions aggregated for all</p> <p>9 customers in a single customer account. In</p> <p>10 addition, the proprietary positions would be</p> <p>11 aggregated so that you won't know which positions</p> <p>12 are LBI's, which positions are LBI's affiliates',</p> <p>13 and which positions are the positions of customers</p> <p>14 at LBI's affiliates, all of which would be</p> <p>15 indicated on the proprietary -- in the proprietary</p> <p>16 account at the clearing house.</p> <p>17 So, while you could get certain</p> <p>18 information from the clearing house, because of</p> <p>19 its aggregate nature, you wouldn't be able to</p> <p>20 distill out exactly where the exposures were and</p> <p>21 whose responsibilities they were.</p> <p>22 Q And you also mentioned that Barclays</p> <p>23 first learned of the VIX position on the morning</p> <p>24 of the 21st, Saturday the 21st.</p> <p>25 A I think Saturday was the 20th.</p>
Page 180	Page 181
<p>1 Confidential - K. Raisler</p> <p>2 Q Saturday the 20th?</p> <p>3 A Yes.</p> <p>4 Q Do you remember that?</p> <p>5 A Yes.</p> <p>6 Q What was the significance of that?</p> <p>7 A I think the significance of that is a</p> <p>8 couple-fold. It sort of highlights the</p> <p>9 uncertainty around the disclosures, and it</p> <p>10 emphasizes some of the points I make in my</p> <p>11 declaration about not knowing exactly what was</p> <p>12 going on except at the highest levels.</p> <p>13 The VIX position, which was a</p> <p>14 significant position, was not discovered, as I</p> <p>15 recall, until Saturday, and the problem with the</p> <p>16 VIX position is that it's a problem with</p> <p>17 volatility, and at the time volatility was at</p> <p>18 record levels, and it was a substantial position.</p> <p>19 My recollection is it was a substantial portion of</p> <p>20 the open interest on the exchange, in the</p> <p>21 neighborhood of 30 percent, so that liquidating</p> <p>22 the position would not have been easy, nor would</p> <p>23 it have been easy to hedge the position.</p> <p>24 I recall some discussions about that,</p> <p>25 that it would have -- it would take up to two or</p>	<p>1 Confidential - K. Raisler</p> <p>2 even three weeks to actually unload that position</p> <p>3 or to risk manage it, and so it was an example</p> <p>4 where the amount of margin that had been called</p> <p>5 for by the OCC for that position is -- was pretty</p> <p>6 obviously in Barclays' eyes insufficient to marry</p> <p>7 up with the exposure that that position had, if it</p> <p>8 was going to take two to three weeks to liquidate.</p> <p>9 I think it just emphasizes the levels</p> <p>10 of uncertainty about positions and exposures that</p> <p>11 were on the books as Barclays was trying to make</p> <p>12 these decisions.</p> <p>13 MR. LACY: I have no further</p> <p>14 questions.</p> <p>15 MS. BLOOMER: I don't have any</p> <p>16 questions.</p> <p>17 MR. OXFORD: I have got some</p> <p>18 follow-up on those questions and answers.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. OXFORD:</p> <p>21 Q Starting at the end, Mr. Raisler, you</p> <p>22 just testified that in Barclays' view the margin</p> <p>23 at the OCC was not adequate -- I'm sorry, was not</p> <p>24 insufficient to cover the exposure that the</p> <p>25 position had if it was going to take two to weeks</p>

Page 182	Page 183
<p>1 Confidential - K. Raisler 2 to liquidate? 3 A Correct. 4 MR. LACY: I think you misspoke. 5 A Sufficient, not insufficient; right? 6 Q Let's go back for one second. 7 Is it your testimony, sir, that the 8 margin that Lehman had posted at the OCC in 9 respect of the VIX positions was insufficient in 10 Barclays' eyes? 11 A That is correct. 12 Q And that is based upon a conversation 13 with Barclays; is that correct? 14 A That's correct. 15 MS. BLOOMER: I'm going to object and 16 instruct the witness not to disclose the 17 substance of communications with Barclay 18 that were not had in the presence of third 19 parties such as Lehman. 20 A I think some of these conversations, 21 and I will try to remember as best I can, some of 22 them were within the presence of Lehman and some 23 were not. 24 MS. BLOOMER: Okay. So please stick 25 to the ones that were in the presence of</p>	<p>1 Confidential - K. Raisler 2 Lehman. 3 Q Was the basis of the testimony that 4 you gave in response to your partner's questions, 5 was that a conversation that you had in the 6 presence of Lehman or was it not? 7 MS. BLOOMER: I'm going to object to 8 the extent that requires you to disclose the 9 ones that you had in the presence of only 10 Barclays. 11 A My recollection is that it was a 12 conversation that was had in the presence of 13 Lehman as we were trying to figure out what the 14 exposure was of this position. 15 Q Okay. Who at Lehman's, sir? 16 A Again, the same vagueness that I had 17 from this morning, but I would have assumed it 18 would be Jeff Jennings and Ron Filler, but I would 19 not be certain about that, and obviously others. 20 Q Do you remember anyone advising you 21 that there was excess margin of approximately 22 \$28 million in connection with the VIX positions? 23 MS. BLOOMER: Objection, vague as to 24 time frame. 25 Q Prior to the closing of the</p>
Page 184	Page 185
<p>1 Confidential - K. Raisler 2 transaction, sir, on the 22nd. 3 A I recall that there was some 4 discussion about the size of the margin and the -- 5 a clear conclusion after discussion with Lehman 6 that the margin was significantly inadequate. 7 Q Significantly inadequate for what 8 purpose, sir? 9 A The risk of the position in the view 10 of Barclays, as we discussed it with Lehman, was 11 that this was an illiquid position in an extremely 12 volatile market, and it was a volatility index 13 that therefore had potential enormous swings to 14 it, and as a result, the margin that was being 15 required made assumptions about liquidity and 16 market moves that we thought were too 17 conservative, and therefore, the margin that was 18 already up at the clearing house was not by orders 19 of magnitude sufficient. 20 Q And who calculated the required 21 margin at the clearing house, sir? Was that the 22 OCC? 23 A The OCC would have been the 24 calculator of that, yes. 25 Q And it's your testimony that the</p>	<p>1 Confidential - K. Raisler 2 OCC's requirement for the margins on the VIX 3 positions was unduly conservative -- withdrawn. 4 It's your testimony, sir, that the 5 margin that the OCC required Lehman at the time, 6 prior to the close of the transaction, to post in 7 respect of those VIX positions at the OCC was 8 inadequate to cover Lehman's and in turn Barclays' 9 long-term exposure to those positions? 10 A I think the way I would characterize 11 it is that there was a significant risk that the 12 margin that had been posted would be insufficient, 13 and in that sense it was too conservative from a 14 risk-taking standpoint for the futures team to 15 take over that position with that small amount of 16 collateral. 17 Q Was the risk that Barclays was 18 concerned about, sir, was that a risk of market 19 movement post closing? 20 A Well, it would be a risk of -- since 21 we had guaranteed the OCC's position as of Friday 22 for Monday's close, as of Friday the 19th, it 23 would be a risk that would be in front of us at 24 the time that we discovered it on the 20th, 25 because it was already in effect as of the prior</p>

<p style="text-align: right;">Page 186</p> <p>1 Confidential - K. Raisler</p> <p>2 day, the 19th.</p> <p>3 Q Okay. Let's go back to the guarantee</p> <p>4 on the 19th. Please tell me everything you</p> <p>5 remember about Barclays' guaranteeing Lehman's</p> <p>6 obligations to the OCC with effect from the 19th</p> <p>7 of September, 2008.</p> <p>8 MS. BLOOMER: Objection, asked and</p> <p>9 answered.</p> <p>10 A I think simplistically the agreement</p> <p>11 provides that we were pledging to OCC that any of</p> <p>12 the obligations that occurred from the time of the</p> <p>13 agreement forward would be obligations to be met</p> <p>14 by Barclays.</p> <p>15 Q And when you say the agreement, sir,</p> <p>16 what agreement are you referring to?</p> <p>17 A The transfer and assumption</p> <p>18 agreement.</p> <p>19 Q When did Barclays sign the transfer</p> <p>20 and assumption agreement, sir?</p> <p>21 A I understood it was sometime on the</p> <p>22 19th.</p> <p>23 Q If I were to represent to you that</p> <p>24 Barclays did not in fact sign that until a matter</p> <p>25 of hours before the closing at around 8 a.m. on</p>	<p style="text-align: right;">Page 187</p> <p>1 Confidential - K. Raisler</p> <p>2 September 22nd, 2008, would that change your</p> <p>3 testimony?</p> <p>4 A No, because it was effective as of</p> <p>5 the 19th, as I understood it, regardless of when</p> <p>6 it was signed.</p> <p>7 Q Because Barclays had agreed to this</p> <p>8 in principle?</p> <p>9 A And ultimately when it was -- I guess</p> <p>10 you could raise an interesting intellectual</p> <p>11 question if Barclays had decided to walk away from</p> <p>12 the agreement at that point, what would have</p> <p>13 happened. I believe that the agreement when they</p> <p>14 entered into it was intended to be effective as of</p> <p>15 the 19th, and that was a pledge and representation</p> <p>16 that had been made in order to satisfy the OCC,</p> <p>17 not to take any actions with respect to these</p> <p>18 positions.</p> <p>19 Q Who made that representation that the</p> <p>20 transfer and assumption agreement -- withdrawn.</p> <p>21 What is the basis of your testimony,</p> <p>22 sir, that Barclays had agreed in principle to the</p> <p>23 transfer and assumption agreement with effect from</p> <p>24 some point on Friday, the 19th of September, 2008?</p> <p>25 MS. BLOOMER: Objection, I think it</p>
<p style="text-align: right;">Page 188</p> <p>1 Confidential - K. Raisler</p> <p>2 may mischaracterize the witness' testimony.</p> <p>3 He can clarify it.</p> <p>4 A The agreement itself says it's</p> <p>5 effective as of September 19th close of business.</p> <p>6 In the discussions that we had on the 18th and the</p> <p>7 19th, that I had with OCC, it was clear to me that</p> <p>8 Barclays was stepping up, as it did with the CME,</p> <p>9 to take responsibility for what occurred over the</p> <p>10 weekend.</p> <p>11 I also understood from direct</p> <p>12 conversations with the OCC, that their insecurity</p> <p>13 required this type of action as of the 19th, so</p> <p>14 all of those combined to lead me to that</p> <p>15 conclusion.</p> <p>16 Q Did anybody at Barclays or acting on</p> <p>17 behalf of Barclays tell you that with effect from</p> <p>18 Friday the 19th, they had agreed to the TAA?</p> <p>19 MS. BLOOMER: Object to the form of</p> <p>20 the question, and I instruct the witness not</p> <p>21 to disclose the contents of privileged</p> <p>22 communications with Barclays.</p> <p>23 A I think that to the extent there were</p> <p>24 such conversation, they would be governed by the</p> <p>25 privilege that my counsel has highlighted.</p>	<p style="text-align: right;">Page 189</p> <p>1 Confidential - K. Raisler</p> <p>2 Q Other than a privileged conversation,</p> <p>3 sir, you are unable to tell me what the basis is</p> <p>4 of your testimony that you believe Barclays agreed</p> <p>5 to the TAA Friday, the 19th?</p> <p>6 MS. BLOOMER: Objection. You are</p> <p>7 characterizing what he said. He didn't say</p> <p>8 that Barclays agreed to the TAA. He had a</p> <p>9 discussion about something that was not</p> <p>10 necessarily the exact same thing as the TAA,</p> <p>11 Neil. You have to separate the two, I</p> <p>12 think, to get a clear record.</p> <p>13 A Let me try to clarify, I think.</p> <p>14 Q Sure.</p> <p>15 A Which is sort of my answer earlier,</p> <p>16 which is as a result of my conversations with the</p> <p>17 OCC, as a result of my understanding of their</p> <p>18 insecurities, and as a result of a demand which</p> <p>19 they had made, which I had communicated back to</p> <p>20 Barclays, all of those led me to understand that</p> <p>21 Barclays had represented to the OCC that effective</p> <p>22 the close on the 19th, that it was going to stand</p> <p>23 by all of the obligations of LBI to OCC effective</p> <p>24 the close of business the 19th?</p> <p>25 Q Okay. I think that is helpful, thank</p>

Page 190	Page 191
<p>1 Confidential - K. Raisler</p> <p>2 you. Let me just zoom in on the last part of your</p> <p>3 answer there, sir.</p> <p>4 And you said you understood that</p> <p>5 Barclays had represented to OCC that effective the</p> <p>6 close of the 19th, it was going to stand by all of</p> <p>7 the obligations of LBI to OCC effective the close</p> <p>8 of the 19th. When did Barclays make that</p> <p>9 representation to the OCC, to your knowledge?</p> <p>10 A Okay. What I was trying to describe</p> <p>11 was the data points that I had that led me to that</p> <p>12 conclusion. I don't know when that was done. I</p> <p>13 don't actually know if it was done, I don't know</p> <p>14 who did it.</p> <p>15 But all of the circumstances around</p> <p>16 my activities and the comfort level that I got</p> <p>17 from OCC at the end of the day on Friday, the</p> <p>18 19th, led me to conclude that such a</p> <p>19 representation almost certainly had to have been</p> <p>20 made.</p> <p>21 Q But you don't know whether or not</p> <p>22 such a representation was in fact made because you</p> <p>23 don't have any direct knowledge, it's an</p> <p>24 inference, sir?</p> <p>25 A No, no. I think we tried to separate</p>	<p>1 Confidential - K. Raisler</p> <p>2 this part of the discussion from what I may have</p> <p>3 obtained through the attorney-client privilege.</p> <p>4 Q All right. So, I see what you are</p> <p>5 saying. So, other than what you may have obtained</p> <p>6 through the attorney-client privilege, you are</p> <p>7 unable to identify what representation, if any,</p> <p>8 was made by Barclays to the OCC as of the 19th of</p> <p>9 September?</p> <p>10 MR. LACY: I am going -- on the --</p> <p>11 Q As of and on the 19th of September,</p> <p>12 2008.</p> <p>13 MR. LACY: The agreement itself is as</p> <p>14 of the 19th.</p> <p>15 A I think I have to rely on what I said</p> <p>16 in answering the prior questions, yes.</p> <p>17 Q When you said, Mr. Raisler, that</p> <p>18 Barclays had told you it considered the margin</p> <p>19 that was posted at the OCC in respect of the VIX</p> <p>20 positions we discussed was inadequate, who told</p> <p>21 you it was inadequate?</p> <p>22 MS. BLOOMER: I'm going to object.</p> <p>23 And please, to the extent -- please.</p> <p>24 Only disclose the communications that</p> <p>25 you had in the presence of LBI or a third</p>
Page 192	Page 193
<p>1 Confidential - K. Raisler</p> <p>2 party.</p> <p>3 I'm sorry, is there a concern with</p> <p>4 that objection, Neil?</p> <p>5 MR. OXFORD: No.</p> <p>6 MS. BLOOMER: Okay. Thank you.</p> <p>7 A I am reasonably certain it would have</p> <p>8 been Tim Stack.</p> <p>9 Q Was anyone else present for that</p> <p>10 discussion with Mr. Stack?</p> <p>11 A We had a series of discussions, some</p> <p>12 of which would be privileged, but some of which</p> <p>13 would have also included, I believe, Jeff Jennings</p> <p>14 and/or Ron Filler at Lehman as we were trying to</p> <p>15 get to the bottom of the VIX exposure.</p> <p>16 Q And Mr. Stack told you what exactly</p> <p>17 with respect to the inadequacy of the margin to</p> <p>18 cover the risk to Barclays?</p> <p>19 MS. BLOOMER: Same objection.</p> <p>20 A Beyond the high-level articulation I</p> <p>21 have given you, I am not confident that the more</p> <p>22 detailed conversations occurred in the presence of</p> <p>23 Lehman rather than just with Mr. Stack alone or</p> <p>24 with the team at Barclays alone.</p> <p>25 Q Did you have any discussions with</p>	<p>1 Confidential - K. Raisler</p> <p>2 anybody about the need for Barclays to have margin</p> <p>3 over and above the OCC's minimum requirements in</p> <p>4 order to protect Barclays against the future</p> <p>5 market risk of movements of Lehman positions at</p> <p>6 the OCC for which they were assuming</p> <p>7 responsibility?</p> <p>8 MS. BLOOMER: Same objection.</p> <p>9 A I think the discussions that we had,</p> <p>10 that I had with the OCC on the 18th and the 19th,</p> <p>11 highlighted that point from the OCC's perspective.</p> <p>12 I know that concern was shared by Barclays as a</p> <p>13 result of the meeting that we had during the week</p> <p>14 of the 15th.</p> <p>15 Q Do you have any other information</p> <p>16 that answers my last question?</p> <p>17 I am happy to have it read back.</p> <p>18 Would you like it read back?</p> <p>19 A That's okay.</p> <p>20 MS. BLOOMER: Again, the same</p> <p>21 objection.</p> <p>22 A No more detail that doesn't implicate</p> <p>23 the attorney-client privilege.</p> <p>24 Q Mr. Lacy asked you some questions</p> <p>25 about the aggregation of proprietary positions.</p>

Page 194

Page 195

Confidential - K. Raisler
Do you remember that testimony?

A Yes, I do.

Q At which exchange or clearing organization were proprietary positions aggregated, sir?

A Basically all of them in the U.S., and actually, I didn't discuss this in my testimony earlier, but in exchanges around the world, there is a commingling of customer and proprietary in a single account in most jurisdictions, certainly in the -- in Eurex and Germany and a number of Asian exchanges.

Specifically in the U.S., there would be a single proprietary account, as there would be a single customer account, and the proprietary account would include the positions of, in this situation, LBI, but also LBI's affiliates and the customers of LBI's affiliates. All of them would be aggregated in a proprietary account.

Q Why would the customers of LBI affiliates be aggregated in the proprietary account?

A Because under the foreign jurisdictions from which those accounts would

Confidential - K. Raisler

come, because we are talking about non-U.S. affiliates of LBI, the -- those jurisdictions that I just indicated don't distinguish between customer and proprietary, so at the futures broker level, let us say an LBIE level, they would have a single account, and it would commingle proprietary and customer.

So when it delivers the position to LBI, LBI would know an account of LBIE or LBSF or some other LBI entity. It wouldn't know how much of that account was proprietary to that affiliate and how much of it represented customer positions of that foreign affiliate.

Q We covered this next series of questions a little earlier, but I want to make sure I understand what you know about this issue, Mr. Raisler.

To your understanding of the business deal, sir, how were the accounts of LBI affiliates being treated in the transfer of the futures business from Lehman to Barclays?

MS. BLOOMER: Objection to form.

A They would be treated -- let me be sure I have this right. I am not sure I knew then

Page 196

Page 197

Confidential - K. Raisler
and I am not sure I recall now.

Q Your letter to the CFTC that we looked at earlier says, "Pursuant to the agreement, LBI will transfer all customer accounts including 100 percent of each customer's net equity as reflected on the books of LBI to the LLC."

Do you remember that passage, sir?

A Yes.

Q Is it your testimony that you simply don't remember one way or the other whether affiliates are included within what you meant when you wrote to the CBTC about customer accounts being transferred?

MR. LACY: He has testified about that at some point.

A The affiliates would be included in the house account provision of, of that letter, not the customer provision of that letter.

Q Okay. Great.

A Since the affiliate would be a house account.

And the permission obtained from the CFTC to transfer the house account to -- from LBI

Confidential - K. Raisler

to Barclays is clear from the CFTC's letter.

What I don't know, did not know then and don't recall now, was exactly what the terms of the agreement between LBI and Barclays are in terms of the -- sort of the -- not who is, if you will, responsible for those positions, who gets to own them.

Q Do you know, sir, one way or the other whether or not Barclays has charged back the LBI estate for any costs incurred in connection with LBI affiliate accounts?

MS. BLOOMER: Objection to form and to the use of the term "charged back."

A I think I need some clarification.

Q Do you know whether or not Barclays has in any way looked to the LBI estate for the costs it incurred in connection with any LBI affiliate account that was transferred pursuant to the provision in the CFTC letter of the 19th?

MS. BLOOMER: Objection to form.

A I don't know.

Q I think we have covered it before. I just want to make sure I am not missing anything.

Do you know what steps, if any,

Page 198

Page 199

Confidential - K. Raisler
Barclays has taken to close out positions on the
Tokyo Commodity Exchange?

A I -- we talked earlier a little bit
about the Ministry of Finance in Japan. My best
recollection is that the positions were moved,
that the customer positions were moved from the
LBI affiliate in Japan to the Barclays entity that
carries those positions, but that the collateral
supporting the positions is tied up in the LBI
affiliate bankruptcy in Japan.

And there has been communications
with, including the Japanese regulators, about
releasing those assets. I believe that
proprietary positions of LBI in Japan have been
liquidated, but I don't know a lot of detail about
that.

Q Do you know who they were liquidated
by, sir?

A If they were to have been liquidated,
they would have been liquidated by the exchange.
Let me put a caveat on that. It also could have
been liquidated by Lehman in the week prior. I
don't know, because the discussions that we have
had pretty much across-the-board with the foreign

Confidential - K. Raisler
exchanges had been around customer positions, not
house positions, as most of the house positions
had been either voluntarily or involuntarily
liquidated.

The one complication is with those
markets that don't distinguish between customer
and house, you don't really know what you got.

Q With respect to the Tokyo Grain
Exchange, sir, do you know what steps have been
taken, if any, to close out any Lehman positions
there or to transfer them to Barclays?

A I think the same across all of the
Japanese markets. I don't recall a distinction
among them. I think they are all sort of tied up
in the same bankruptcy situation.

Q What about the Hong Kong Futures
Exchange, sir? Do you know what steps have been
taken by Barclays to assume LBI's positions at the
Hong Kong Futures Exchange?

MS. BLOOMER: Objection to form.

A I think Hong Kong, the positions
moved, but the assets haven't, as I described in
some other jurisdictions.

Q When the positions move in a

Page 200

Page 201

Confidential - K. Raisler
jurisdiction such as Hong Kong and others, I think
the U.K. and Germany you described earlier, sir,
did Barclays have to make any payment to the
exchange in respect of any liability in respect to
those positions?

A That -- insofar as the positions
moved to Barclays without collateral moving, there
would be only two choices. One is the customer
would be responsible for coming up with that, with
a -- well, I'm sorry.

To be clear, there are two parts to
your question. One is if there is a shortfall in
the account, a deficit in the account, there are
two sources to fund that, the customer whose
liability it is and have the customer put up the
money, or you could put up the money, Barclays
could have put up the money itself.

The other is you would have to
re-post initial margin, because the initial margin
has been swallowed up in the collateral freeze of
the bankrupt broker. In that case the same, you
can go back to your original customer and say, I'm
sorry, your money has been frozen. So if you want
to continue to trade, you are going to have to put

Confidential - K. Raisler
up new initial margin. Or Barclays could have
funded it for them on the assumption that Barclays
would get back that money at some point in the
future.

It's my understanding that generally
Barclays put up the money in both situations I
described, although I think for the most part the
initial margin situation was clearer. The deficit
probably would be more of a case by case.

Q Were there futures that Lehman had on
the Korea Exchange, sir, do you know?

A There were positions in the Korea
Exchange, which were discussed, and we were also
trying to get monies released from there as well
after the positions I think moved.

Q So Barclays has transferred the
positions from Lehman to Barclays at the Korea
Exchange; is that right?

MS. BLOOMER: Objection to form.

A I think you misspoke there, but I
think that the -- that Barclays as part of the
purchase has been able to move the positions that
were previously with Lehman to the Barclays
account in Korea.

Page 202	Page 203
<p>1 Confidential - K. Raisler</p> <p>2 Q When Barclays, you say pursuant to</p> <p>3 the agreement, has been able to move these</p> <p>4 positions, are you talking about the APA, sir?</p> <p>5 A It's a fair comment. I would say in</p> <p>6 aggregate all of the agreements, without trying to</p> <p>7 distinguish one versus the other.</p> <p>8 Q And I am not trying to be tricky.</p> <p>9 A Pursuant to the -- perhaps the</p> <p>10 oversimplification, would be pursuant to the</p> <p>11 bankruptcy court order approving the agreements.</p> <p>12 Q But in no case are you aware, sir, of</p> <p>13 a separate agreement other than the bankruptcy</p> <p>14 court order and any related sale documents?</p> <p>15 A There would be no -- as we discussed</p> <p>16 earlier, no separate or distinct agreement with a</p> <p>17 foreign exchange or a foreign market that I am</p> <p>18 aware of, and I would not think there would be.</p> <p>19 Q Were there also futures positions on</p> <p>20 the Malaysia Bursa?</p> <p>21 A My recollection is yes, there were.</p> <p>22 I believe that one or several of the Asian,</p> <p>23 non-Japanese Asia market exchanges did release</p> <p>24 some of the capital, some of the collateral back</p> <p>25 to Barclays. I just don't recall which markets it</p>	<p>1 Confidential - K. Raisler</p> <p>2 was.</p> <p>3 Q Who is responsible for dealing with</p> <p>4 the Japanese and Asian market exchanges that may</p> <p>5 have released back some of this collateral back to</p> <p>6 Barclays?</p> <p>7 A It would be the same operations</p> <p>8 people within Barclays that we discussed at the</p> <p>9 inception of this deposition.</p> <p>10 Q Was that something for which you also</p> <p>11 had responsibility as an outside counsel to</p> <p>12 Barclays, sir?</p> <p>13 A In the broadest sense. I was to try</p> <p>14 to get a handle on that information, and also to</p> <p>15 the extent clarification was available, clarity</p> <p>16 around a process to move those positions and the</p> <p>17 collateral.</p> <p>18 Q Did Lehman also have positions at the</p> <p>19 ICE Futures in Canada?</p> <p>20 A Yes, it did.</p> <p>21 MS. BLOOMER: Objection, asked and</p> <p>22 answered.</p> <p>23 A Again, we are talking the same --</p> <p>24 presumably we are talking the same time frame.</p> <p>25 Q Yes.</p>
Page 204	Page 205
<p>1 Confidential - K. Raisler</p> <p>2 A The week of September 15th.</p> <p>3 Q And have those positions been moved</p> <p>4 to Barclays?</p> <p>5 A My understanding is that those</p> <p>6 positions have been moved, and my best</p> <p>7 understanding is the collateral has moved as well.</p> <p>8 MS. BLOOMER: Just to clarify, we are</p> <p>9 talking about customer positions now as</p> <p>10 opposed to proprietary?</p> <p>11 MR. OXFORD: Well, I thought</p> <p>12 Mr. Raisler testified that with respect to</p> <p>13 all of the foreign exchanges, he was talking</p> <p>14 about customer positions.</p> <p>15 A I have been focused on customer</p> <p>16 positions across-the-board, that's correct.</p> <p>17 Q So the answers that you have had in</p> <p>18 response to the series of questions that I have</p> <p>19 given you were intended to refer to customer</p> <p>20 positions; is that correct?</p> <p>21 A Except where I have indicated that</p> <p>22 the customer and proprietary may be commingled, in</p> <p>23 which case it is not clear which is which, in</p> <p>24 which case positions may have moved that included</p> <p>25 proprietary positions.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Okay, thank you.</p> <p>3 A That would not be true of Canada,</p> <p>4 where there is a distinction between customer and</p> <p>5 proprietary accounts.</p> <p>6 Q Were there also -- sorry, we have</p> <p>7 covered Singapore. Forgive me. It's getting late</p> <p>8 and warm here.</p> <p>9 Kansas City Board of Trade, I forgot</p> <p>10 whether I asked you if the positions have been</p> <p>11 moved.</p> <p>12 A We discussed the Kansas City Board of</p> <p>13 Trade. The -- as we discussed, LBI is not a</p> <p>14 clearing member of the Kansas City Board of Trade,</p> <p>15 so it cleared through another broker. That other</p> <p>16 broker, I can't remember, I think that Kansas City</p> <p>17 did not have any customer positions. It only had</p> <p>18 affiliate positions. I think those positions</p> <p>19 were, were liquidated, but the positions and the</p> <p>20 collateral did move, to my best recollection.</p> <p>21 Q Did Barclays take any steps to move</p> <p>22 Lehman proprietary futures positions to its</p> <p>23 account at any exchange or clearing organization</p> <p>24 or broker outside of the U.S.?</p> <p>25 MS. BLOOMER: Objection, lacks</p>

Page 206

Page 207

Confidential - K. Raisler
foundation.

A I think almost all of the proprietary
positions had been liquidated prior to the
effective date of the transaction, the 22nd. The
only ambiguity I have around that is that some of
the exchanges, as I indicated, commingled customer
and futures, and therefore it would be difficult
for them to know which ones were proprietary and
which ones were not, and so in those markets the
positions might well have moved and then be up to
Barclays to sort out which ones were customer and
which ones were proprietary and either take over
or liquidate the proprietary positions.

(Continued on next page with witness
jurat.)

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MR. OXFORD: Thank you, Mr. Raisler.
I don't have any questions, any further
questions for you at this time.

MR. LACY: This deposition is closed.
(Time noted: 3:31 p.m.)

oOo

I, KENNETH RAISLER, the witness herein,
do hereby certify that the foregoing testimony of
the pages of this deposition to be a true and
correct transcript, subject to the corrections, if
any, shown on the attached page.

KENNETH RAISLER

Subscribed and sworn to before me this

_____ day of _____, _____.

NOTARY PUBLIC

Page 208

Page 209

STATE OF NEW YORK) Pg. of Pgs.
COUNTY OF NEW YORK)

I wish to make the following changes
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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.

COUNTY OF NEW YORK)

I, BONNIE PRUSZYNSKI, a Notary
Public with and for the State of New York,
do hereby certify:

That KENNETH RAISLER, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such deposition
is a true record of the testimony given by
the witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 1st of March, 2010.

Bonnie Pruszyński

I N D E X

WITNESS	PAGE
KENNETH RAISLER	
BY MR. OXFORD	5, 181
BY MR. LACY	178

E X H I B I T S

Exhibit 658A Declaration of Kenneth Raisler	5
Exhibit 659-A BCISC 00009676-88	98
Exhibit 660-A BCISC 00009653-65	120
Exhibit 661-A BCISC 00009298-301	126
Exhibit 662-A BCIEXS 00116806-07	167
Exhibit 663-A SC 00003451-53	171
Exhibit 664-A September 19, 2008 e-mail plus attachment	174

A	171:8,13,15	209:16	76:11 79:22 81:4	al (1)
ability (12)	accounts (100)	actions (2)	104:17,20,23,25	1:8
29:14 30:11 33:16	12:23 68:25 69:19	136:17 187:17	105:4,7,14 107:12	Alasdair (3)
39:2,5,8,22,23	77:25 78:2 79:5,8	active (2)	109:17,23 133:22	143:12,13,15
86:15 87:15 137:17	80:3,12,25 81:15,22	50:13 110:20	133:23 134:17	Albany (1)
177:5	88:2 89:5,12,19	actively (2)	136:19 146:13,18	3:11
able (37)	90:19 91:8 94:23	40:11 135:10	179:12,14 194:18	albeit (1)
16:15 17:6,14,16 18:6	95:21 96:7,16 97:11	activities (3)	194:19,22 195:3,20	44:23
20:8 24:6 26:16	97:17,19,22,25	43:15 158:21 190:16	196:13,18	Alex (1)
28:2,21,22 30:16	103:24 105:14,16	activity (2)	afternoon (5)	9:20
34:7,22,24 35:13	105:20,23 107:4,4	144:13 158:25	7:2 8:14 9:2 50:3	allow (3)
38:15,18,22 41:6	107:13 108:2,2,3,8	actual (3)	177:20	67:12 116:7 162:15
42:23 59:22 61:22	108:19,23,24 109:2	95:9,21 110:20	agency (1)	allowed (1)
62:22 85:18 114:19	109:4,6,8,9,10,10	add (2)	69:7	113:14
124:23 125:12,21	109:14,15,16,18,20	133:7 141:8	aggregate (9)	ambiguity (2)
125:24 138:9	109:22 110:2,3,13	addition (6)	28:23 80:21 85:16	136:16 206:6
161:24 175:11,15	110:18,21,23,24,25	47:20 69:12 112:25	94:18,21 112:18,20	amend (3)
179:19 201:23	111:2,4 116:24	131:23 166:21	179:19 202:6	10:9 38:13 158:6
202:3	119:24 120:16	179:10	aggregated (6)	amount (30)
absence (2)	126:20 127:6 128:4	additional (8)	178:23 179:8,11	9:5 32:14 40:20 62:9
21:3 114:10	130:4,6,11,18 131:3	41:19 42:2 59:23	194:6,20,22	62:9 87:4 90:14,18
absent (4)	131:7 136:24	115:10 120:14	aggregation (1)	91:17 95:2,3 96:5
26:15 34:19 98:5	137:21 148:22	149:12 150:25	193:25	97:9 111:8 112:7,23
120:2	151:16 157:14	151:17	aggressively (2)	114:7,17 116:12,21
absolutely (3)	159:19,20 164:19	address (1)	40:11,25	117:18 118:4,17
41:10 82:9 167:4	165:13 166:18,20	157:20	ago (2)	123:13 136:16
access (1)	171:10,19 176:6,24	addressed (2)	29:4 56:13	137:20 152:20
136:23	177:3 179:5 194:25	68:3 140:4	agree (2)	167:9 181:4 185:15
accomplished (1)	195:20 196:5,14	adequacy (1)	15:4 80:6	amounts (3)
50:21	197:12 205:5	63:8	agreed (9)	96:12 113:23 131:22
accord (1)	accretive (2)	adequate (5)	161:20 162:7 163:7	Ananda (4)
176:20	149:18,21	61:18 96:25 97:21,24	163:15 187:7,22	68:2 71:9,13 102:21
account (77)	accurate (4)	181:23	188:18 189:4,8	and/or (3)
28:20 79:13,19,19,20	25:24 26:4,6 88:14	administer (3)	agreement (49)	82:17 138:12 192:14
79:20 80:20,21,22	accurately (1)	38:15,16 39:8	13:2,14,19 14:6,16	Ann (1)
81:6,9,10,17 82:5,5	106:21	administering (2)	50:25 56:19,20,21	43:19
82:19 83:18 84:20	acquire (2)	84:6 86:6	57:25 58:4,9 73:21	answer (50)
85:14,17,19 86:8,17	61:8 62:14	admonition (2)	103:19,23 105:13	10:9 13:4 25:22 28:10
86:21 87:5 88:6,11	acquisition (8)	53:13,16	134:3,13 135:13,18	28:18 29:4,8,11,15
88:16 89:4,9 90:15	6:7 7:14 64:16 144:4	advancing (1)	153:5 155:7,12,14	29:23 34:19,22,24
93:17 106:10,12,16	144:9 149:17 154:2	172:24	156:7,11 157:18	39:12 41:5 59:22
106:17,22 109:24	171:8	adverse (1)	158:8 159:6,12	79:23 83:13 85:10
110:6,8,10,19	across-the-board (2)	168:23	172:16,18 186:10	90:12 92:7,9,22
112:19,19 119:6,8	198:25 204:16	advising (1)	186:13,15,16,18,20	93:8 97:20 107:14
120:5,6,9 138:6	Act (5)	183:20	187:12,13,20,23	107:16,18 114:14
149:6 158:2,6,8	111:10 117:22 118:5	affiliate (23)	188:4 191:13 196:5	117:2 125:19
160:13 174:11	118:19 125:16	21:18 74:11,13,14	197:5 202:3,13,16	127:21 130:16
176:15 177:6 179:9	acted (1)	105:23 106:8,23	agreements (8)	133:6 138:15,19
179:16 194:11,15	23:11	107:4 109:22 110:7	134:7 136:2 140:11	142:15 145:8 149:3
194:16,17,20,23	acting (1)	137:13 140:17,18	140:20 141:10,17	151:2 152:11 153:3
195:7,10,12 196:19	188:16	142:19 146:19	202:6,11	154:8 155:21
196:23,25 197:19	action (12)	195:12,14 196:22	ahead (5)	160:11 163:19
200:14,14 201:25	49:24 55:3 69:25	197:12,19 198:8,11	11:12 138:14 145:19	164:23 171:4
205:23	87:16,17,18,19	205:18	170:19,21	189:15 190:3
accounting (6)	115:19 116:6	affiliates (32)	ahold (1)	answered (3)
150:4 164:15 169:11	136:14 188:13	21:25 22:6 23:11,15	22:2	114:4 186:9 203:22

<p>answering (3) 15:11 29:22 191:16</p> <p>answers (7) 29:4 133:8 155:2 160:14 181:18 193:16 204:17</p> <p>anticipated (1) 128:8</p> <p>anxious (1) 24:11</p> <p>anybody (25) 7:7 22:2 23:14,16 35:17 37:19,22 45:11 53:4 70:4 78:17 94:2 117:3,4 124:18 135:3 150:14 153:23 162:19,25 163:7,14 164:5 188:16 193:2</p> <p>anymore (1) 109:22</p> <p>anyway (1) 121:12</p> <p>APA (1) 202:4</p> <p>apart (3) 9:12 35:16 47:24</p> <p>apologize (2) 11:12 159:4</p> <p>apparently (4) 39:13 100:2,3,9</p> <p>appear (1) 148:8</p> <p>appears (5) 100:15 101:4 103:2 168:5 173:19</p> <p>apply (2) 29:8 81:14</p> <p>appointment (1) 177:21</p> <p>appreciate (4) 83:14 114:3 145:20 152:7</p> <p>appreciation (1) 72:5</p> <p>appropriate (1) 70:2</p> <p>approval (8) 120:3,4 129:6,10,11 135:20 150:10 152:8</p> <p>approvals (1) 127:12</p> <p>approves (1) 126:18</p> <p>approving (1)</p>	<p>202:11</p> <p>approximately (7) 8:6,17 36:8,16 144:20 144:22 183:21</p> <p>arbitrary (1) 91:22</p> <p>areas (1) 67:7</p> <p>arrangement (1) 122:20</p> <p>article (1) 37:13</p> <p>articulation (1) 192:20</p> <p>ascertain (1) 27:7</p> <p>Asia (1) 202:23</p> <p>Asian (3) 194:13 202:22 203:4</p> <p>aside (1) 61:5</p> <p>asked (19) 26:7 29:24 33:4 34:3 34:12 49:17 51:8 54:8 55:10 57:8 75:9 76:18,19 94:3 171:5 186:8 193:24 203:21 205:10</p> <p>asking (14) 26:24 56:12 57:14,24 92:23 93:2,3,6,7 95:19 123:25 132:18 138:25 167:14</p> <p>asks (1) 108:21</p> <p>aspect (2) 11:22 12:2</p> <p>asset (9) 13:14,18 14:16 84:6 153:5 154:11 155:7 156:3,6</p> <p>assets (41) 11:3,23 12:23 13:3,12 16:12 79:14 82:4,10 82:12,18,23,24 83:5 83:16,20 84:20 86:4 86:5,7 96:17 124:12 129:25,25 130:13 130:14 131:23,23 132:15 133:21 134:16 151:13 163:23 166:17,21 172:17,24 176:14 177:4 198:14</p>	<p>199:23</p> <p>assigned (1) 71:11</p> <p>assist (2) 71:17 87:23</p> <p>associated (9) 26:11 41:16 59:13 60:17 61:11,24 62:17 107:12 154:12</p> <p>assuage (2) 30:16,19</p> <p>assuaged (1) 30:15</p> <p>assume (7) 60:19 114:11,14 117:14 129:16 142:17 199:19</p> <p>assumed (6) 50:19 71:10 141:20 142:8,19 183:17</p> <p>assumes (2) 127:5 137:2</p> <p>assuming (3) 54:7 84:13 193:6</p> <p>assumption (16) 58:4 127:2 134:2,13 135:15 136:4 150:6 156:11 159:6 162:13 172:15 186:17,20 187:20 187:23 201:3</p> <p>assumptions (1) 184:15</p> <p>assured (2) 56:9,14</p> <p>attached (2) 174:13 207:12</p> <p>attachment (15) 99:8 100:11,20 102:24 122:22 126:8,12,15,16,17 170:19,20,21 172:6 210:18</p> <p>attachments (7) 99:15,20 100:13 121:3 175:4,7,16</p> <p>attempt (4) 22:18,21 27:7,18</p> <p>attempting (1) 27:13</p> <p>attempts (1) 23:19</p> <p>attendance (1) 9:4</p> <p>attended (1)</p>	<p>143:22</p> <p>attention (1) 40:21</p> <p>Attorneys (5) 3:4,9,14,19 4:4</p> <p>attorney-client (3) 191:3,6 193:23</p> <p>auction (14) 31:2,13,16,17,18,21 31:22,25 34:20 35:6 36:7,10 37:16 55:3</p> <p>auctioned (4) 33:12 43:7,10 48:18</p> <p>auctioning (3) 31:8 36:14 40:23</p> <p>Australia (4) 22:15,17,20 139:23</p> <p>authority (3) 22:9 162:20,25</p> <p>authorization (1) 126:20</p> <p>authorizations (1) 128:20</p> <p>authorize (3) 103:13 123:6 129:8</p> <p>available (5) 76:10,14 89:25 119:8 203:15</p> <p>Avenue (2) 3:20 8:5</p> <p>avoid (3) 63:14 82:19 118:11</p> <p>aware (17) 52:22 53:3,7 61:15 104:13,15,18 105:11 140:21 152:15 157:19 158:11 160:8 161:19 169:22 202:12,18</p> <p>a.m (3) 2:3 101:6 186:25</p>	<p>193:17,18 197:10 197:14 200:23 201:4 202:24 203:5 203:5</p> <p>backstop (2) 39:24 44:20</p> <p>backstopping (1) 38:24</p> <p>backwards (2) 115:16,17</p> <p>balance (2) 95:21 119:8</p> <p>balances (1) 96:11</p> <p>bank (9) 80:19,23 81:10,13 82:4 89:5 128:17 176:15 177:7</p> <p>bankrupt (2) 141:3 200:22</p> <p>bankruptcy (15) 1:2 65:2,2 67:14 68:19 119:25 128:21 129:6 135:20 139:11,21 198:11 199:16 202:11,13</p> <p>bankruptcy-related... 137:14</p> <p>Barclay (2) 7:7 182:17</p> <p>Barclays (254) 3:9 5:15,24 6:6,7,15 6:22 7:10,13,14 8:10 9:15,17 10:21 10:25 11:3,11 12:15 12:24 13:3,11,22 14:25 15:8 16:2,17 18:19,21 19:14,16 19:18 22:10 23:9 24:8 25:21 26:12,18 27:13,17 30:10 33:11 34:14 35:2 36:18 37:5,9 40:4 48:16 49:3,17 50:2 50:4,14,15,22,24 51:22 53:4,5,6,18 53:21 54:2 55:10,15 56:3,6,14 57:17 58:3,9,18,21,25 59:7,12,18 60:13 61:7,9 62:13,15,22 64:16,18 65:11 67:13 71:16,20 73:9 73:20 74:3 75:20 76:18,25 94:3,11</p>
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95:13 96:4,5,13 97:6 101:16 104:14 105:13,17,20,24 106:13,24 107:5,20 108:20 109:18 116:23 117:4,12 120:13 124:18 127:2,5,13,18 128:19 129:4,20 130:19 131:3,7,13 131:18,20 132:10 132:20,25 133:12 134:3,18,20 135:13 135:25 136:22 137:23 138:3,11,20 139:4,25 140:2,10 141:4,9,12,19 142:8 142:17,17 145:3,12 146:5,21 147:4,14 147:19 148:16,17 149:16 150:15,24 151:6 152:8,15 154:2,6,11 156:3 160:23 161:14 163:21 164:4,18,25 165:9,14,25 166:5,7 166:19 168:6,16 169:13 171:8 172:19 179:22 181:6,11,22 182:10 182:13 183:10 184:10 185:8,17 186:5,14,19,24 187:7,11,22 188:8 188:16,17,22 189:4 189:8,20,21 190:5,8 191:8,18 192:18,24 193:2,4,12 195:22 197:2,5,10,16 198:2 198:8 199:12,19 200:4,8,17 201:2,3 201:7,17,18,22,24 202:2,25 203:6,8,12 204:4 205:21 206:12 Barclay's (2) 51:7 172:16 barrier (1) 26:23 base (1) 72:24 based (18) 27:11 35:21 37:15,18 90:16 113:17 114:8 114:10 116:22 119:8 131:4 134:8	145:24 146:5 162:18 163:5,13 182:12 basic (1) 81:14 basically (11) 18:17 55:15 69:20 72:23 73:6 86:21 89:23 90:5 108:21 110:5 194:7 basis (12) 35:8 36:12 37:10 89:3 90:20 92:13 116:13 138:11 151:2 183:3 187:21 189:3 Bates (8) 98:24 121:2,11,17 122:2 168:17 172:6 177:15 Battery (2) 2:7 3:15 BCIEXS (2) 168:17 210:15 BCISC (6) 98:25 121:2 126:8 210:12,13,14 began (1) 127:12 beginning (2) 64:13 70:11 begins (5) 75:16 103:18 117:25 118:15 144:16 begun (1) 129:18 behalf (15) 40:8 41:23 52:2 58:21 58:23,25 103:8,11 103:14 117:11 124:13 161:20 162:20 163:7 188:17 believe (66) 7:3 10:10 15:11 16:7 16:19 20:6,20 21:2 23:3 29:12 31:10 36:13 42:21 44:9 46:17 47:7 53:7 55:22,23,24 57:2 58:23,25 62:21,23 63:15 66:25 70:7 73:3 74:22 76:20 78:16,17 91:23 94:6 94:13,18 101:22 102:11,12 103:3 104:22 105:9 111:2	115:11 116:4 117:4 118:15 129:18 130:24 160:20 162:7 165:11 173:4 173:21,22,23 174:15 175:8 178:4 178:5 187:13 189:4 192:13 198:14 202:22 believed (2) 132:20 165:12 belonged (1) 164:20 benefit (1) 84:7 benefits (1) 148:7 best (34) 7:24 8:25 9:3,19 15:10 20:11 23:13 31:20 32:4 42:16 46:20 52:8 54:11,18 56:8,17 71:12,14 74:15 102:9 117:10 125:11 131:2 138:23 156:19 157:17 158:12 163:19 172:21 174:16 182:21 198:5 204:6 205:20 better (1) 118:10 beyond (4) 59:22 79:5 125:22 192:20 Bianca (1) 178:2 bidders (1) 48:16 bigger (1) 11:15 Bill (1) 52:5 billion (2) 36:8,16 bit (10) 9:18 23:2 61:2 80:8 84:3 86:20 135:11 165:18 168:7 198:4 blackline (2) 100:12,12 blessing (1) 71:22 blood (1) 209:17 BLOOMER (124)	3:12 6:23 11:5,25 13:5,20 14:18 15:3 19:18 22:11 26:5 29:10 36:21 38:8 47:11 48:9,22 53:14 54:17 57:12 59:15 59:25 60:18,23 62:2 63:2 78:25 80:16 82:7 83:2,22 84:21 84:25 86:18 90:21 91:11 92:14,21 93:3 94:4 95:16 97:12 99:6,24 105:18 106:3,14,19 107:6 107:17 116:25 117:19 118:7 121:10,16,25 125:4 127:7 129:3 130:7 131:16,24 132:16 136:25 138:13,22 146:7 147:20 149:24 150:18 151:18 152:10,22 154:4,13 155:13,23 156:5,15,18 159:21 160:25 161:6,17 162:2,21 163:8,16 164:21 165:16 166:12 167:11 168:3,12,15 171:11 171:23 173:13 177:12,22 178:2,7 181:15 182:15,24 183:7,23 186:8 187:25 188:19 189:6 191:22 192:6 192:19 193:8,20 195:23 197:13,21 199:21 201:20 203:21 204:8 205:25 blue (2) 147:22,25 blur (4) 8:21 9:18 14:13 16:4 blurred (3) 43:14 64:2,21 blurring (1) 72:10 Board (10) 20:14,16,23,24 43:22 44:5,14 205:9,12,14 Bob (1) 67:20 BOIES (1) 3:8	Bonnie (4) 1:18 2:8 209:7,23 book (1) 39:3 books (9) 70:17 77:16 78:15 104:2 109:18 110:6 110:8 181:11 196:7 boss (1) 143:16 bottom (10) 108:23 110:22 121:11 121:16 122:2,5,6 145:21 170:18 192:15 Bowling (1) 65:3 break (11) 9:8 47:12 48:8 51:16 59:5 61:2 98:13 111:17,21 168:8 171:6 breakdown (3) 29:3 76:16 96:11 breakdowns (1) 62:7 BRIDGET (1) 3:7 broad (4) 4:5 15:13 67:7 145:10 broaden (1) 7:15 broadier (3) 11:17,23 144:9 broadest (1) 203:13 broadly (6) 16:11 77:4 127:22 137:24 138:8 144:2 broke (1) 171:4 broker (37) 11:4 21:17,18 41:18 44:8 79:17,22 80:2 80:20,23,24 81:4 82:18 83:8,12,16,17 83:20 84:19,22 85:5 85:6,8 87:22 89:13 91:18 136:3 138:10 138:10 140:11,16 140:25 195:5 200:22 205:15,16 205:24 brokers (6) 21:21 22:5 23:12 89:16 137:22,22
--	--	--	---	---

Brothers (5) 1:7 3:4 82:12 144:4 144:16 brought (1) 10:15 buffer (19) 41:20 42:2,8,9 82:19 82:23 83:11,18 84:11 88:5,18 112:13 113:3,14 120:14 130:2 151:14 166:10,14 bulk (5) 67:11 72:25 73:21 101:2 108:18 Bursa (1) 202:20 business (82) 6:8,9 7:15 11:2,24 12:3,3,16 13:2,10 13:12 14:24 15:2,7 15:9 37:6 40:16 42:3 59:6,8,14 60:14,15 61:7,8 62:14,15,24 63:12 63:13 64:17 66:11 75:22 77:2 78:2,3 83:10 84:11 101:15 104:6 105:13 106:2 106:11 115:9,9 119:9,10 127:4 130:5 133:13,25 134:9 135:16 144:5 144:12,16,19 145:16 146:6,17,23 149:17 150:17 151:5,7,8,13 154:3 154:12 156:4 160:22 161:8,13,15 161:21,21 163:14 169:14 188:5 189:24 195:19,22 businesses (3) 10:21 146:12,24 buy (1) 146:5 <hr/> <p style="text-align: center;">C</p> <hr/> C (4) 3:2 4:2 209:2,2 calculate (1) 90:18 calculated (1) 184:20 calculation (6) 91:6,22 92:2 95:18,20	113:24 calculations (9) 92:12,18 93:12,17,24 94:10 95:14 116:22 175:3 calculator (1) 184:24 call (11) 7:22 11:8,22 23:22 34:5 46:3 57:19 66:17 110:12 168:4 177:3 called (7) 5:3 21:13 34:9 48:5 68:7 71:15 181:4 calls (18) 6:21 7:8,17 34:6 35:15,18,22 46:14 46:16 57:15 63:23 66:7 73:15 77:22 84:2 97:18 107:19 177:8 Canada (2) 203:19 205:3 Canadian (2) 66:24 74:17 capacity (1) 85:8 capital (29) 88:9,9,10,12 92:6 111:9,22 112:16 113:24 114:3 117:12 123:22 124:8,10,16,25 125:6,15 144:12 149:7,12,18,20 150:10,16,25 151:10,17 202:24 care (1) 114:4 carries (2) 28:19 198:9 carrying (1) 30:9 case (20) 1:7 23:24 25:14 41:19 81:7 84:19,23 88:19 99:13 116:5 156:11 158:6 170:8 171:19 200:22 201:10,10 202:12 204:23,24 cases (3) 21:19 137:4 140:18 cash (1) 110:19 cast (1)	64:19 Castedo (1) 178:3 catch (1) 34:8 category (1) 110:13 caveat (3) 82:15 160:11 198:22 caveats (1) 152:25 CBOE (7) 20:19 44:24 45:3,5,7 45:13 48:3 CBTC (1) 196:14 center (1) 148:25 certain (14) 9:5 17:5 28:9,14 32:5 49:7 51:16 108:4 119:23 124:21 176:4 179:17 183:19 192:7 certainly (18) 7:4 15:4 17:9 25:9 39:4 42:4 53:21 58:22 65:20 68:5 70:20 75:11,11 159:3,5 162:12 190:19 194:12 certainty (1) 157:16 Certified (1) 2:11 certify (3) 207:9 209:9,15 CFE (2) 48:4 78:13 CFR (1) 108:14 CFTC (60) 66:17 67:6,16 68:21 69:4,16,20,24 70:4 70:23 72:2,9,19 73:22 75:9,9 79:12 81:2 84:5 87:22 93:14 97:8 98:2 100:25 101:4 102:3 102:15,19 108:4,21 111:25 113:17 114:6,18 115:6,15 115:17,24,25 116:14 120:3,12,18 122:17 124:7,10 125:18 126:18	127:19 135:19,23 151:23 152:9 158:20 159:17 160:2,4 196:3,25 197:20 CFTC's (3) 70:14 108:18 197:2 chairman's (1) 68:11 change (12) 123:10 155:20 187:2 208:7,9,11,13,15,17 208:19,21,23 changes (4) 101:24 122:18 123:15 208:4 changing (2) 77:6 97:2 chaos (1) 77:11 chaotic (3) 18:2 147:24 148:24 Chapter (1) 1:6 characterization (1) 163:17 characterize (3) 14:21 160:12 185:10 characterized (1) 15:12 characterizing (1) 189:7 charged (2) 197:10,14 Chase (3) 173:3,6,7 check (1) 124:17 checked (2) 124:20,22 Chicago (9) 20:12,14,16 42:14,24 43:10,17 49:11 135:14 chip (2) 147:22,25 choices (1) 200:9 circumstances (2) 96:25 190:15 cite (1) 108:14 City (10) 20:23,24 43:22 44:5,6 44:13 205:9,12,14 205:16	claimed (1) 170:17 claiming (1) 170:22 clarification (5) 146:9 154:21 155:18 197:15 203:15 clarifications (1) 101:25 clarified (1) 119:17 clarify (4) 165:20 188:3 189:13 204:8 clarity (2) 85:3 203:15 classes (1) 150:5 clawback (1) 168:19 clean (1) 29:6 clear (30) 14:3 16:24 21:21 40:15 44:25 48:2,3 49:22 54:5 59:16 63:3 78:17 100:16 106:10 113:8,16 117:5 128:10 134:22 135:21 141:24 155:17 158:9 163:25 184:5 188:7 189:12 197:2 200:12 204:23 cleared (20) 16:21 44:8 47:23 52:18,19 74:10,13 89:13 104:16,20,23 104:25 105:4,7 157:23 158:14,14 158:15,17 205:15 clearer (2) 135:12 201:9 clearing (104) 16:21 17:3,8,15,17 18:8,15 19:13,15 20:2,24 21:6,9,16 21:17,21,24 22:5 23:4,11,15,21 24:25 25:15 29:9,13 30:23 33:18 37:25 41:18 41:18,20,24 44:8,19 45:2 46:5 47:20,24 55:17 56:16 68:17 69:2,13 81:7,12,12 82:6,20 85:13 86:3
--	---	--	--	--

86:9,14,23,24 87:3 87:7,8,11 88:22,25 89:4,7,16,18 90:13 105:9,15 111:20 112:11 113:19 114:23 115:8 134:9 136:2,13,20 140:24 141:5,10,22,25 142:4,9,11,18,20 158:19,20,21,23,25 176:5,19,25 177:7 178:22 179:16,18 184:18,21 194:4 205:14,23 clears (2) 45:3 47:19 Cleary (2) 11:16 59:2 client (3) 117:11 148:3 178:6 clients (8) 90:6 144:21 145:17 147:6,9,12,17 148:11 Climate (5) 20:17 42:14,24 43:10 43:17 close (16) 40:7 42:25 43:8 56:24 119:9,11 163:3 185:6,22 188:5 189:22,24 190:6,7 198:2 199:11 closed (5) 43:6 65:15 153:14 155:9 207:5 closing (16) 11:20 32:3 43:2 47:9 51:10 66:14 70:6 93:20 96:14,23 97:5 132:11 150:15 183:25 185:19 186:25 CME (61) 24:5,7,9,13,16,24 25:3,7,11 26:2,3 27:7 28:2,4,15,17 28:19,22 29:9,23,25 32:6 33:15 34:7,10 35:5,6,23 36:15,17 37:19,22,23 38:4 39:10,16,21 40:7,14 41:7,13,17 42:2 44:15 46:13 48:17 50:3,14 57:5,7,14 85:18 87:20 88:24	106:12 111:25 158:16 176:13,19 176:23 188:8 CME's (5) 31:18,21,22 32:7 39:7 code (1) 39:16 collateral (63) 26:25 28:4 32:15,20 33:5,5 36:17 41:8 41:12 59:13 60:17 61:11,18,24 62:10 62:17,25 63:4,8,14 77:24 79:11,12 80:2 80:14 97:9,22,24 111:23 120:7 127:22,24 129:17 131:2 134:24 135:10 136:5 137:6 137:7,9,12 138:6,12 138:21 139:5,7,9,12 139:14,19,24 141:2 141:7,12 185:16 198:9 200:8,21 202:24 203:5,17 204:7 205:20 colleagues (1) 14:9 collect (1) 16:19 collected (1) 41:23 collects (1) 38:19 combination (1) 113:12 combined (2) 113:13 188:14 come (9) 13:10 42:8 55:8 70:7 146:20 162:24 165:25 166:4 195:2 comes (2) 85:4,8 comfort (6) 44:18 55:2 114:22 128:11,23 190:16 comfortable (2) 40:14,19 coming (2) 139:11 200:10 commence (1) 34:20 comment (7) 63:11 109:13 156:6 157:18 159:4	173:11 202:5 comments (3) 83:24 174:6,12 commingle (1) 195:7 commingled (2) 204:22 206:7 commingling (1) 194:10 commission (6) 6:9 39:17 66:17 71:23 85:7 117:22 Commission's (4) 111:11 118:6,19 125:16 committee (2) 3:19 178:17 commodities (3) 39:17 89:24 118:5 commodity (10) 66:16 108:3 109:5 110:14,16 111:10 117:22 118:18 125:16 198:3 common (2) 88:6,7 communicate (2) 50:2 58:15 communicated (2) 56:6 189:19 communications (17) 6:25 13:22 48:24 59:17 67:2 73:11 107:20 131:18 132:25 150:20 160:8 164:24 168:6 182:17 188:22 191:24 198:12 company (1) 104:7 compared (3) 32:7 40:23 96:8 comparison (1) 99:9 complete (4) 76:5 84:2 98:11 140:3 completely (1) 140:5 complex (4) 26:16 127:16 128:7,9 complexity (1) 138:7 compliance (1) 97:7 complicated (4) 28:8 41:3 118:8	133:17 complication (1) 199:6 complications (1) 26:11 compound (1) 171:6 concept (2) 90:11 176:21 concern (9) 39:7,10,13,21,25 44:16 111:24 192:3 193:12 concerned (3) 39:4 54:24 185:18 concerning (4) 6:7 7:13 75:21 170:13 concerns (14) 30:19 33:16 38:4,9,11 38:12,14 44:14 69:10,12 82:20 137:14 157:13,20 conclude (2) 61:17 190:18 conclusion (7) 62:22 112:6 162:17 162:18 184:5 188:15 190:12 condition (1) 115:18 conditions (1) 126:21 conduct (1) 109:11 conducted (1) 77:25 conference (5) 7:17,21 46:14 63:23 64:6 conferences (1) 75:20 confess (1) 165:2 confident (3) 39:2 160:9 192:21 Confidential (204) 1:12 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1	45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 confirm (2) 114:12,20 confirmed (1) 115:21 confuse (2) 124:4 158:25
---	---	--	--	--

confusing (2) 118:13 176:22	contemporaneous (1) 143:10	24:10	180:8	28:3,19,24 29:4
confusion (2) 95:23 136:18	content (1) 129:11	copied (1) 135:23	course (12) 13:16 16:5 19:3 39:20	37:23 38:2,5,16
congratulate (1) 18:25	contents (3) 168:5 171:18 188:21	copies (1) 100:14	64:11,21 72:12	39:5,9 40:16,22
connection (14) 5:14 6:15 14:25 22:9	context (9) 39:3 91:15 98:9	copy (6) 99:11 100:8 103:2	97:16 145:9 147:21	41:8 42:11,18 49:18
28:17 70:23 116:24	107:13 117:9	135:20 153:4	153:17 173:5	50:4,25 51:8,23
134:8 135:14 136:3	119:25 132:4 139:8	156:20	court (6) 1:2 65:2,2 80:5	52:13 54:15 55:18
141:11 183:22	143:7	copying (1) 100:3	202:11,14	59:13 60:5,16 61:10
197:11,18	contexts (2) 119:25 140:4	Corp (1) 45:2	court's (1) 129:6	61:23 62:19,24
consent (1) 108:18	continue (9) 25:6 33:17 38:15 39:8	correct (57) 6:10,11,16 26:21	cover (6) 158:8 159:6,7 181:24	68:25 69:18 77:24
conservative (3) 184:17 185:3,13	40:15 65:24 69:9	29:18 37:6 43:23	185:8 192:18	78:2 79:8,16 80:2
consider (5) 26:22 83:19 167:5	140:6 200:25	44:25 46:19 52:11	covered (5) 76:2 111:3 195:15	80:13,19,20 81:6,8
168:8 171:7	continued (2) 4:2 206:15	58:5 59:9 70:12	197:23 205:7	82:5 83:6 85:19
consideration (2) 10:25 169:22	continuing (2) 30:11 72:18	73:4 81:19,20 83:4	covering (2) 113:2,5	86:16 90:19 93:16
considerations (1) 174:11	contours (3) 17:18,22 119:19	84:17 86:17,19	CRAWFORD (2) 3:7 178:15	93:24 94:22 96:6,16
considered (6) 147:18,18,25 169:7	contract (4) 48:5,5,6 110:16	89:14 92:16,19	created (3) 177:19,24 178:21	97:10,25 103:24
169:10 191:18	contracts (4) 47:19,25 109:5	103:12,20 104:8	creating (2) 50:24 157:16	109:17,20 110:6,8
consistent (5) 34:12 115:12 124:11	110:14	108:10 109:12	credit (2) 147:19,23	110:11,24 112:19
128:19 163:23	conversation (21) 30:7 33:23,25 37:8	113:4,7,11 122:3	Creditors (1) 3:19	112:20 113:2,3,6
consists (2) 144:20 145:17	44:10 46:12,24 47:7	123:9,15,22 125:20	creditworthiness (1) 147:5	120:15 124:12
constant (1) 69:22	49:16 50:18 53:24	125:21 126:2,10	creditworthy (1) 148:5	127:23 128:3
constraints (1) 77:11	71:13 162:19,24	128:5 145:18	Cresce (1) 43:19	129:22,22 131:8,21
consult (2) 49:25 155:10	163:13 164:5	150:12 153:22	Cromwell (20) 4:3 6:14,18 7:10 9:7	131:23 132:13,14
consultant (1) 10:13	182:12 183:5,12	160:24 161:16,18	9:12 11:15 14:10	142:2 151:9,15
contact (11) 18:15 24:12 67:19	188:24 189:2	163:15 165:9,10	45:12 49:6 53:4,6	164:18 165:8 166:6
69:22 71:20 72:5,8	conversations (35) 29:20 37:18 42:14,21	166:11 182:3,11,13	102:3 117:10	167:2,8 169:12,18
72:18 74:17,20	44:3,23 45:5,6,9,12	182:14 204:16,20	124:20,22 125:13	171:9,18,20 176:15
157:12	45:15 47:15,16	207:11	132:18 160:4 170:7	176:24 178:22
contacted (1) 75:9	49:14 51:17,18 52:9	corrections (1) 207:11	Cromwell's (3) 117:16 123:11,20	179:9 194:10,16
contacts (4) 64:3,4 72:11,13	53:18 54:12 66:9,19	correctly (1) 55:12	culminated (1) 33:25	195:5,8,13 196:5,14
contain (1) 108:2	69:15 72:7 73:2,14	corresponding (1) 115:22	Curious (1) 51:4	196:20 198:7 199:2
contained (2) 116:2 145:15	101:14,19,21,23	costs (2) 197:11,18	current (2) 95:11 140:5	199:7 200:9,15,16
contains (1) 168:5	167:6,15 182:20	counsel (17) 11:10 14:7,8 24:15	currently (2) 24:18 178:6	200:23 204:9,14,15
contemplates (1) 104:5	188:12 189:16	43:19 52:4,6,7	custom (1) 26:7	204:19,22 205:4,17
	192:22	129:5 132:22 173:7	customer (122) 16:10 25:13 26:3 27:9	206:7,12
	conversely (1) 155:25	173:8,10,10 178:13		customers (51) 38:13,22,25 39:22
	convey (1) 11:9	188:25 203:11		40:9 41:15,23 42:3
	conveyed (1) 132:22	counsel's (2) 24:3 68:10		44:20 47:23 62:4
	conveys (1) 154:11	counterpart (1) 27:14		79:10 80:23 82:11
	cooperative (1)	COUNTY (2) 208:3 209:5		82:25 83:7,21 84:7
		couple (1) 102:8		85:15 86:23 87:2,9
		couple-fold (1)		87:10 91:9 96:18
				109:23 112:9,10,12
				112:21,22 113:12
				115:8 124:13
				130:15,23 133:23
				139:18 146:14,20
				147:19,23 148:22
				149:8,9 165:14
				166:7 179:9,13
				194:19,21
				customer's (5) 103:25 120:6,7,9
				196:6
				C-R-E-S-C-E (1) 43:20

D				
d (2) 81:24 210:3	178:15 Debtors (1) 1:9	deletion (1) 122:18	dialogue (1) 37:24	discuss (5) 15:19 71:24 72:25
daily (8) 38:18 40:11 82:21 86:22 87:2 89:3 90:20 92:12	decide (1) 139:11	delineated (1) 28:24	difference (1) 79:24	173:2 194:8
data (3) 145:10,13 190:11	decided (1) 187:11	delivered (1) 78:12	different (7) 15:17 18:15 46:7 89:17 123:23 159:3 167:13	discussed (27) 38:25 39:18 44:7 58:16 82:15,17 94:7 111:17 116:5 122:20 123:14,18 124:9 134:2 135:10 144:8 146:16 152:20 160:10 177:5 184:10 191:20 201:14 202:15 203:8 205:12,13
date (17) 5:18 51:20 54:19 63:23 95:4,6 98:17 113:20 120:22 126:4 139:25 143:10 146:4 167:20 172:2 174:23 206:5	decision (5) 59:7,14 60:14 61:7 62:14	delivers (1) 195:9	differently (3) 109:14 129:9 158:15	
dated (1) 155:18	decisions (2) 141:15 181:12	demand (5) 51:15 52:12,16 54:14 189:18	difficult (4) 43:8 99:10 137:15 206:8	152:20 160:10 177:5 184:10 191:20 201:14 202:15 203:8 205:12,13
dates (1) 172:14	declaration (16) 5:15,23 6:4 36:7,13 37:11 75:13 76:8 78:24 160:18 161:12,22 162:9 163:6 180:11 210:10	demand (2) 115:17,25	difficulties (1) 165:7	discussing (4) 123:2 126:19 134:23 149:2
David (3) 45:14 101:5 103:10	deemed (1) 83:5	demands (2) 61:19 86:8	digested (1) 28:12	discussion (20) 30:8,10 36:23 49:10 100:7 132:7 144:11 144:25 147:3,11 153:2 159:25 164:16 170:4 172:13 184:4,5 189:9 191:2 192:10
day (26) 3:3 7:24 8:17 9:13 11:7 31:19 39:12,13 41:21 50:10 53:25 63:6,10 65:11 90:3 90:5 91:20,22 92:18 93:10 102:11 119:10 145:3 186:2 190:17 207:16	default (17) 63:15 68:23 69:17 83:5,10 84:4,6,10 86:6,14 87:13 96:23 112:5 113:6,10 114:11 115:22	deposition (11) 1:13 2:6 5:13 64:13 168:20 169:3 203:9 207:5,10 209:11,12	diligence (8) 12:22 14:22 15:13,18 15:22 45:20 93:18 179:3	
days (5) 12:20 17:25 20:21 41:5 129:12	defaulted (1) 113:19	depositions (1) 143:2	dimension (1) 38:10	discussions (43) 6:6 11:10 12:17 25:6 25:10 34:13 37:21 39:19 49:8 55:23 62:4,6,9 66:16 67:6 77:21 105:21 127:15 129:17 132:22 133:2 134:19 135:4 147:8 147:16 150:13 151:12 152:13 154:6 157:15 159:17 164:13 165:6 166:24 172:22 173:4,6 180:24 188:6 192:11,25 193:9 198:24
day's (1) 90:9	defaults (8) 41:2,2 61:16 63:8 97:5 111:18 114:21 115:7	describe (10) 6:4 45:19 77:14 83:19 93:19 110:21 160:19 161:11,21 190:10	dinner (1) 34:7	
deal (13) 13:10 14:24 15:7 63:9 67:16,25 71:22 146:21 163:4,15 164:3,6 195:20	defect (1) 100:3	described (22) 15:21,22 16:17 45:21 46:11 63:18 82:24 89:12 100:25 115:22 116:8 120:14 122:20 126:21 130:2 148:25 151:15 162:8 163:4 199:23 200:3 201:8	direct (5) 56:19 87:21,24 188:11 190:23	
dealer (12) 11:4 83:16,17,20 84:19,22 85:5,6,8 136:3 138:10,11	define (1) 149:20	description (1) 99:14	directed (4) 66:12 91:2 96:3 97:4	
dealers (1) 140:11	defined (2) 108:9 109:14	designation (1) 81:21	directing (1) 152:18	
dealing (6) 16:10 21:5 53:19 88:24 135:24 203:3	definitely (2) 8:15 20:5	desirable (1) 130:5	direction (4) 116:23 117:3 140:23 140:25	
dealings (2) 12:4 153:17	definition (1) 158:2	detail (4) 15:20 36:23 193:22 198:16	directly (2) 69:12 75:8	
dealt (3) 16:23 67:22 134:13	definitions (1) 15:18	detailed (5) 73:13 75:21 76:25 85:25 192:22	disclose (13) 13:21 48:23 59:17 131:17 132:24 150:20 152:12 154:5 164:24 182:16 183:8 188:21 191:24	
debtor (1)	Delaware (1) 104:7	details (2) 11:18 59:3	disclosed (1) 78:21	distill (1) 179:20
	delegated (5) 18:13 19:11 22:10 27:2,6	developed (1) 128:13	disclosure (2) 107:19 170:14	distinct (3) 21:8 22:14 202:16
			disclosures (1) 180:9	distinction (4) 33:7 82:22 199:14 205:4
			disconnect (1) 8:24	distinctly (1) 64:22
			discovered (2) 180:14 185:24	distinguish (5) 12:19 33:9 195:4 199:7 202:7
			discrete (1) 46:10	

DISTRICT (1) 1:3	6:12	effectuating (1) 127:15	entire (1) 78:15	exactly (6) 31:19 49:20 179:20
division (6) 10:7,14 68:8,15,16	driving (1) 77:12	efficiently (1) 69:10	entities (1) 145:23	180:11 192:16
158:18	due (10) 12:21 14:22 15:13,18	effort (2) 141:5 144:10	entitled (1) 80:6	197:4
divisions (1) 20:14	15:21 45:20 77:20	efforts (1) 141:11	entity (5) 21:5 141:3 142:19	EXAMINATION (3) 5:6 178:18 181:19
document (47) 5:21 58:8 98:25 100:9	duly (2) 5:4 209:12	either (14) 16:9 33:12 55:3 64:17	195:11 198:8	examined (1) 5:4
100:13,21 121:9	<hr/> E (8) <hr/>	68:24 81:23 82:4	equate (1) 118:2	example (11) 26:14 46:12 78:12
122:9 126:12 143:5	3:2,2 4:2,2 209:2,2	104:17 124:18	equation (1) 141:8	82:3,13 85:18 86:16
143:8 153:7,11,21	210:3,9	125:12 133:21	equity (8) 47:24 52:19 54:21,21	89:7 106:9,11 181:3
153:24,25 154:10	earlier (34) 15:12 47:5 49:13 55:9	134:14 199:4	103:25 110:18	exceed (1) 119:7
154:16,24 155:5	57:6 72:22 82:16,17	206:13	159:2 196:7	exceeded (1) 165:13
156:2,8,13,22 157:2	96:22 112:18	elaborate (3) 23:2 47:18 60:7	equivalent (1) 177:10	exception (1) 139:8
157:3,9,22 159:14	116:18 121:8	eligible (1) 119:6	ERIC (1) 3:22	exceptions (1) 139:5
167:23 168:4,17,22	123:14 124:9 128:4	eliminate (1) 122:19	errors (1) 121:8	excess (13) 83:7 88:5,15 91:8,14
169:3,5 170:6,16	130:3 134:2 139:23	embrace (1) 146:13	ESQ (5) 3:7,12,17,22 4:7	92:5 113:12 120:7
174:20,25 175:20	144:8 152:21	embraced (1) 20:13	essentially (1) 115:14	139:19,19 159:18
175:25 177:14,17	157:11 159:4 165:7	EMMANUEL (1) 3:18	establish (1) 18:15	160:13 183:21
177:18,18,23 178:8	166:11 174:2,4,7	emphasizes (2) 180:10 181:9	established (1) 168:20	exchange (55) 20:13,17,19 25:15
documents (5) 37:16 50:24 51:5	189:15 194:9	employed (2) 178:5,6	estate (8) 83:6 137:25 167:3,10	31:5 33:6 34:15
175:12 202:14	195:16 196:4 198:4	employees (1) 70:14	169:18 171:21	35:15 36:3,9 38:25
doing (11) 13:15 15:21 44:12	200:3 202:16	encourage (1) 69:25	197:11,17	42:15,17,25 43:10
65:8,22 69:16 70:20	earliest (1) 150:23	ended (1) 8:23	et (1) 1:8	43:17 48:4 49:11
93:25 135:8,9 164:8	early (11) 8:20 9:2 33:23 42:6	endorsing (1) 71:23	Eurex (2) 139:6 194:12	55:16 63:7 84:5
dollars (1) 36:6	94:7 129:24 131:15	engaged (5) 6:14,19 66:13 67:6	European-based (2) 145:25 146:6	85:12 86:3 87:15
Domestic (1) 175:3	131:22 143:11	71:16	evaluated (1) 90:15	88:18,20,22,25
domestically (1) 165:23	157:4 178:20	engagement (1) 65:20	evening (4) 7:2 9:2 34:6 65:14	111:10 113:19
doubt (1) 65:18	easier (1) 9:8	engaging (1) 12:21	event (4) 39:16 55:17 67:13	117:22 118:5,19
dozen (1) 72:11	easily (1) 22:2	enormous (2) 36:5 184:13	86:13	125:16 134:9
draft (11) 102:10 157:4,6,17	East (1) 3:5	enter (4) 135:13,25 140:10	everybody (2) 48:7 54:5	135:14 136:2
173:18,19,23 174:3	easy (4) 36:6 40:22 180:22,23	164:4	evidence (1) 137:2	138:10,10 140:24
174:4,7,13	effect (7) 55:21 56:23 153:25	entered (4) 14:6 141:9 159:12	exact (1) 189:10	177:2 179:7 180:20
drafting (3) 56:20 58:15 155:12	185:25 186:6	187:14		194:4 198:3,21
drafts (2) 102:3,6	187:23 188:17			199:10,18,20 200:5
dramatic (1) 116:6	effective (10) 38:16 168:21 187:4			201:12,14,19
dramatically (2) 16:25 98:8	187:14 188:5			202:17 205:23
draw (5) 85:19 86:15 87:4 89:2	189:21,23 190:5,7			exchanges (47) 16:8 18:14 19:12,16
89:8	206:5			20:2 21:4,7,10
drawing (1) 86:24	effectively (4) 56:18 91:4 112:21			23:21 37:25 44:7
drill (1)	141:15			45:18 46:4 60:4,5
	effectuate (2) 128:13 162:12			60:11 61:6,16,19
				64:4 69:13,21,22,23
				89:16,18 97:19
				114:23 115:7
				127:24,25 134:20
				136:13,21 139:17
				141:5,10,21 142:11

<p>176:4 194:9,13 199:2 202:23 203:4 204:13 206:7 exchange's (1) 63:14 exclusively (4) 52:24 65:16,16 84:7 execute (2) 148:12 158:20 executed (5) 103:2 122:23,24 134:3 155:19 execution (1) 156:20 exemption (2) 119:16,22 exercising (1) 168:19 exhibit (30) 5:17,20 75:14 98:16 98:20 100:8,20 102:17 120:20,21 120:25 126:3,7 143:3 151:21 153:6 154:20 156:12 167:19,23 171:25 172:4 174:22 210:10,12,13,14,15 210:16,17 existence (1) 159:17 expect (4) 28:2 131:21 135:17 141:16 expectation (2) 131:13,14 expected (2) 50:20 131:6 expecting (1) 60:19 expedient (1) 148:12 experience (1) 131:5 expiration (2) 51:20 54:19 expired (1) 55:7 explain (4) 80:10 90:6 110:14 119:21 explained (1) 36:3 explanation (1) 15:24 explore (3)</p>	<p>10:19 12:14,22 exposure (6) 36:4 181:7,24 183:14 185:9 192:15 exposures (2) 179:20 181:10 express (3) 120:3,4 129:10 expressed (1) 157:12 extensive (2) 66:16 73:14 extent (33) 28:10,21,22 41:12 47:21 49:3 59:12 60:3,16 61:14,23 63:16 71:19 73:7 87:6 107:18 121:7 125:5 133:2 142:14 142:16 144:6 146:24 152:11 161:2 162:10 164:23 165:24 176:24 183:8 188:23 191:23 203:15 external (1) 37:5 extraordinarily (1) 99:10 extremely (2) 18:2 184:11 ex-U.S (3) 89:17 104:17 135:24 eyes (2) 181:6 182:10 e-mail (22) 23:23 67:4 75:2 98:24 101:3 102:16,24 120:25 122:14,15 122:15,16 126:7,12 126:15,16 170:24 172:5 174:13 175:2 175:7 210:18 e-mailed (1) 113:21 e-mails (2) 75:11 170:18 <hr/>F<hr/>F (1) 209:2 fact (13) 5:23 41:25 81:11 85:6 89:22 110:9 113:18 131:21 148:4</p>	<p>175:24 178:21 186:24 190:22 facts (1) 137:2 fair (6) 14:21 65:12 90:4 95:24 125:9 202:5 familiar (8) 13:13,18 14:4,5 58:6 172:10,11 175:19 familiarity (1) 131:5 far (3) 11:17 150:5 175:22 fault (1) 176:10 FCM (11) 21:11 84:14 86:14 88:4,8,15 89:6 90:18 145:24,25 146:6 FCMs (2) 21:14 119:24 FCM's (1) 87:10 feel (1) 170:20 feeling (1) 148:3 figure (2) 172:23 183:13 Filler (9) 10:11,12 19:10 23:3 23:17 135:2,5 183:18 192:14 final (3) 120:11 122:23 174:17 finalized (1) 14:17 finally (1) 129:19 Finance (3) 75:4,6 198:5 financial (1) 148:18 find (2) 22:18 96:3 fine (2) 107:22 168:24 finished (3) 8:18 123:2 126:19 firm (4) 5:11 24:20 52:13 117:14 first (45) 5:3 6:14,19 7:4,5,11</p>	<p>24:3,5 25:2 26:18 33:23 34:20 39:7 44:16 45:4 47:2 65:13 66:13 70:22 75:16 86:20 89:7 98:2 99:8 100:13,20 102:10,24 103:18 107:24 111:5 117:2 122:13,22 124:3 129:21 133:24 137:3 153:10 155:4 156:16,25 170:10 170:15 179:23 firstly (1) 80:11 five (1) 168:11 five-minute (2) 48:8 98:13 FLEXNER (1) 3:8 Floor (1) 3:10 flow (1) 77:12 flowing (1) 79:4 focus (2) 100:19 126:14 focused (2) 30:10 204:15 focusing (5) 30:4 45:4 114:5,13 126:11 folks (2) 8:13 68:9 follow (2) 60:25 176:2 followed (2) 12:21 106:5 following (5) 34:17 40:4 140:8 208:4,5 follows (1) 5:5 follow-up (2) 46:9 181:18 foregoing (1) 207:9 foreign (23) 21:6,10,10 23:4 77:7 79:3 90:12 135:8 136:21 137:20 138:4 141:5,8,10,21 142:10 175:3 194:24 195:14</p>	<p>198:25 202:17,17 204:13 Forgive (1) 205:7 forgot (2) 124:2 205:9 form (79) 11:25 13:5 14:18 15:3 26:5 28:6,24 29:10 32:23 38:8 40:17 54:17 59:25 60:18 62:2 63:2 74:5 78:25 83:2,22 84:21 84:25 85:16 86:18 90:23 91:11 92:14 94:4 96:20 97:13 105:18 106:3,15 117:19 118:7 127:7 129:3,11 130:7,8 131:9,24 136:25 138:13,22 143:24 145:4 146:7 147:20 149:24 151:18 152:10 154:13 155:23 156:5 157:5 159:22,24 160:25 161:6,17 162:2,21 163:8 164:21 166:12 167:11 171:11,23 174:16 175:19 176:16,18 188:19 195:23 197:13,21 199:21 201:20 formal (1) 72:4 formally (1) 168:18 formed (1) 104:6 former (1) 142:10 formerly (2) 20:15 178:5 formula (1) 124:11 forth (4) 101:24 126:18 127:17 209:11 forward (2) 71:22 186:13 foundation (12) 47:4 80:17 82:8 90:22 91:12 92:15 94:5 107:7 152:23 162:22 175:18</p>
---	---	---	---	--

<p>206:2 four (2) 36:14 81:24 fourth (2) 103:3,5 frame (6) 13:6 22:12 66:11 82:8 183:24 203:24 free (1) 170:20 freeze (1) 200:21 frequent (1) 108:22 Friday (24) 25:10 49:15,16 50:3 50:18 51:18,19 52:10,22 54:18 55:6 55:22,24 101:5 157:4,14 175:2 177:20 185:21,22 187:24 188:18 189:5 190:17 front (2) 5:19 185:23 frozen (1) 200:24 FSA (4) 66:23 73:3,16,22 full (3) 103:18 107:24 111:6 functions (1) 158:21 fund (2) 138:5 200:15 funded (2) 119:8 201:3 funds (59) 41:19 42:2 79:18 80:19,22,24 88:12 111:8 112:7,11,15 112:17 114:7,17 116:13,22 117:18 118:4,17 120:13 123:13 127:13,16 127:20 128:2,6,12 128:18,19 129:8,18 129:23 130:11,12 131:14 132:13 133:10,16,20 134:21 136:19,23 139:12 151:9,14 152:20 159:18 164:19 165:8,23,24 166:4,6 167:3,9 169:13,23 171:21</p>	<p>177:7 further (10) 6:13 18:7 72:6 168:22 169:2 178:12 181:13,19 207:3 209:15 future (5) 39:17 111:23 144:16 193:4 201:5 futures (137) 6:8,9 7:15 10:7,14,20 11:2,24 12:15,23 13:12 15:2,8 20:15 20:17,19 21:21 27:9 29:17 30:5,6,13,21 31:3,11,24 32:16 36:15 38:6 40:8 41:9 42:3,14,24 43:10,17 45:20 47:19,22,25 48:3 52:17,23 53:3,7,10 53:20,22 59:7 60:15 61:8 62:14 64:16 66:11,16 69:8 75:22 77:2 79:11,14,17,22 80:20 81:4,18 82:17 85:7 87:22 89:13 91:18 101:15 104:6 104:16 105:15,25 106:17,22 107:3,13 108:19 110:17,20 112:5 115:9 127:3 127:24 129:15 133:13 134:8,14 135:16,24 136:24 140:16 141:21 142:10 143:17,17 143:18 144:4,19,21 145:16,23 146:13 146:23 149:9,17 150:17 151:5,13 154:2,12 156:4 157:22 158:6,8,12 158:13,15,23 159:6 159:12 160:22 161:15,21 169:14 185:14 195:5,21 199:17,20 201:11 202:19 203:19 205:22 206:8 futures-based (1) 146:12 futures-related (2) 10:20 12:16</p>	<p>gap (1) 133:19 Gavin (1) 73:18 general (14) 11:8 17:24 21:4 24:3 27:25 52:6 62:3,5,8 68:9 76:20 131:4 137:9 160:20 generalities (1) 6:13 generally (19) 6:5 11:13 27:11 29:11 46:2 50:12 65:19 77:23 79:18 81:23 83:25 114:20 125:2 125:22 127:8 132:17 134:19 143:20 201:6 gentleman (1) 10:10 Germany (3) 139:6 194:13 200:3 getting (8) 29:6 39:14 46:6 54:24 78:19 98:10 136:22 205:7 Gilberg (9) 45:15 46:5,14,17 101:5 103:13 123:6 160:5,6 Gilberg's (3) 45:21 103:10 123:5 Gill (1) 35:13 give (9) 20:9,11 26:17 35:25 66:11 89:23 137:23 138:23 163:19 given (14) 29:22 38:20 40:20 50:10 56:12 60:7 91:16 95:22 98:5 160:14 169:22 192:21 204:19 209:13 gives (1) 36:10 global (2) 62:9 144:21 globally (1) 143:18 go (23) 11:12 19:21 36:22 77:13,19 79:5 84:12 84:14 86:20 90:3,8</p>	<p>100:4 107:25 138:14 142:21 168:8,14 170:2,19 170:20 182:6 186:3 200:23 goal (2) 144:2 151:4 goes (4) 98:25 119:5 126:8 172:7 going (53) 6:23 8:21 11:5 15:19 22:25 35:13 36:21 38:18,22 40:12 59:15 60:25 63:9 64:9 68:23 70:19 73:8 91:16 92:21,22 92:23 95:4,16 96:19 98:7 100:19 106:4 106:14 125:4 131:16 132:16,17 132:23 135:11 144:13 149:19 151:7 154:25 160:22 162:15 168:3,18 171:3 180:12 181:8,25 182:15 183:7 189:22 190:6 191:10,22 200:25 good (11) 5:8,9 22:24 27:23 43:12 48:9 54:4,24 70:9 107:14 173:15 gotten (1) 135:20 Gottlieb (1) 11:16 govern (1) 157:22 governed (1) 188:24 Grain (1) 199:9 Great (1) 196:21 Green (1) 65:3 ground (1) 76:3 group (5) 23:7 41:23 76:22 85:16 116:16 guarantee (22) 34:14,20 35:2 49:18 49:21,23 50:4,15,25</p>	<p>51:8 52:13 54:2,14 55:11,16,21 56:15 56:22,23 57:8 114:24 186:3 guaranteed (1) 185:21 guaranteeing (1) 186:5 guess (13) 8:25 9:19 23:17 51:2 57:18 77:4 82:14 110:6 128:16 133:18 143:15 166:14 187:9 guessing (2) 149:25 150:2 Guest (1) 9:20</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H (1) 210:9 half (2) 170:10,15 hand (2) 96:4 209:20 handed (4) 98:19 120:24 126:6 174:24 handing (6) 142:25 153:4 154:19 156:10 167:22 172:3 handle (6) 18:3 38:17 63:17 70:19 148:22 203:14 handled (1) 59:2 handwriting (1) 156:16 happen (5) 30:13,18 87:2,23 104:11 happened (4) 31:14 56:12 74:2 187:13 happy (2) 90:8 193:17 hard (1) 60:24 head (1) 68:16 headed (1) 149:11 heading (2)</p>
	<hr/> <p>G</p> <hr/>			

<p>148:6 150:8 hear (1) 155:2 heard (5) 33:13 48:21 49:4 57:23 136:12 hearing (2) 64:25 139:11 heavily (1) 39:18 hedge (1) 180:23 held (29) 16:13 26:25 28:4 32:15,21 33:5 37:23 38:5 40:8 41:13 60:12 61:6 79:12,18 80:14 81:7 82:5,24 89:4,6 91:10 100:7 128:3 132:13 136:19 137:12,21 150:21 170:4 help (2) 10:16 162:4 helpful (2) 175:23 189:25 hereinbefore (1) 209:11 hereunto (1) 209:19 high (6) 11:13 62:20 77:22 94:14,17 164:6 higher (1) 44:10 highest (5) 16:18 25:16 61:13,21 180:12 highlight (1) 138:7 highlighted (6) 99:9,11,25 109:2 188:25 193:11 highlighting (2) 99:4,6 highlights (1) 180:8 HIGHLY (1) 1:12 high-level (4) 145:10,13 147:8 192:20 high-quality (1) 147:8 Hill (1) 73:18</p>	<p>hinder (1) 26:12 Hodge (3) 143:12,13,15 hold (3) 41:8 169:15 170:24 holding (6) 80:19,22,23,25 124:13 128:17 HOLDINGS (1) 1:8 honest (1) 168:2 Hong (4) 199:17,20,22 200:2 hope (2) 90:3 167:24 hour (3) 34:19,23,25 hours (6) 50:9 91:21 92:3 95:8 122:17 186:25 house (55) 24:25 25:15 30:24 41:18,20,24 55:17 56:16 81:7,12 82:6 82:20 86:3,10,14,23 86:24 87:3,7,9,11 88:23,25 89:5,7 90:13 108:8,24 109:8,9,10,14 110:23 111:2,4 140:24 141:25 142:4,18 158:23 176:19,24 177:7 178:22 179:5,16,18 184:18,21 196:19 196:22,25 199:3,3,8 houses (13) 18:15 19:13 37:25 69:2,14 89:18 111:20 114:24 136:14 141:5,11,22 142:11 Hubbard (3) 2:7 3:13 5:11 huge (2) 35:24 36:2 Hughes (3) 2:6 3:13 5:11 hybrid (1) 84:4 hypothetically (1) 83:11</p> <hr/> <p style="text-align: center;">I</p> <hr/>	<p>ICE (16) 20:15 29:16 30:5,6,13 30:21 31:3,11,24 32:6,9,15,20 33:12 33:16 203:19 idea (1) 36:10 identical (1) 158:22 identification (7) 5:18 98:17 120:22 126:4 167:20 172:2 174:23 identified (6) 64:13 84:12 101:22 147:13 148:17 163:2 identify (7) 98:23 121:7 161:25 162:3,6 172:5 191:7 identity (1) 61:5 ignored (2) 122:6,7 illiquid (1) 184:11 illogical (1) 70:21 immediately (3) 119:10 140:8 168:21 impact (1) 151:16 impediment (1) 29:6 impediments (1) 25:20 implement (1) 163:22 implementation (2) 127:5 133:12 implementing (1) 162:11 implicate (1) 193:22 implication (1) 49:22 implied (1) 86:9 imply (1) 29:21 important (5) 87:12 91:13 117:7 147:14 158:24 imposed (1) 97:19 imprecise (2)</p>	<p>31:9 59:20 impression (2) 17:25 164:2 inability (2) 30:19 148:12 inaccurate (1) 55:14 inadequacy (1) 192:17 inadequate (7) 30:12 112:11 184:6,7 185:8 191:20,21 inadvertent (1) 170:14 inadvertently (2) 168:16 170:12 inception (1) 203:9 inclined (2) 115:20 171:15 include (9) 109:16 110:7,23 129:25 130:13 131:8,23 145:14 194:17 included (7) 94:21 130:22 132:14 192:13 196:13,18 204:24 including (8) 20:14 52:19 103:24 119:14 151:14 166:25 196:6 198:13 incomplete (3) 16:25 17:10,13 increase (4) 150:11,16 151:5,8 incurred (2) 197:11,18 independent (3) 167:6 169:4,9 index (2) 31:10 184:12 indicate (2) 36:6 111:22 indicated (13) 72:22 84:3 91:21 111:21 112:8,18 139:23 140:14 179:6,15 195:4 204:21 206:7 indication (1) 72:6 individual (8) 67:20 110:5,11 120:6</p>	<p>148:3 149:8 162:3,6 individuals (6) 35:16 64:7,12,17 67:22 102:16 industry (1) 131:5 infectious (1) 19:22 inference (1) 190:24 influenced (1) 13:15 information (85) 14:12 16:2,7,12,16,19 16:24 17:7,10,12,15 17:21 18:7,9,12,16 18:17,18 19:6 22:19 24:6 25:12,16,25 26:17,18,19,23,24 27:14,18 28:11,14 28:16,23 29:2,7,14 31:6 32:13,19 36:20 37:2 46:4,6 54:25 59:11,19,23 60:6,13 60:13 61:9,14,21 62:15,18 64:2,3 69:21,23 71:19 75:21 76:9,18 77:2 77:12,14 78:11,18 78:18 79:3 94:3,13 94:20 95:13 96:3 98:11 119:9 133:4 135:6 145:15 179:18 193:15 203:14 informed (2) 71:18 114:25 initial (8) 41:15,16 46:18 86:16 200:20,20 201:2,9 initially (3) 20:18 44:24 66:12 inquiring (1) 7:16 inquiry (1) 25:14 insecure (1) 51:19 insecurities (6) 30:14,17 67:10 68:20 69:2 189:18 insecurity (6) 30:11,25 42:23 87:15 88:19 188:12 inside (4) 20:6 43:18 52:6 173:9</p>
---	--	---	---	--

insofar (2) 161:15 200:7	internal (1) 37:5	52:6 173:20	107:1 108:1 109:1	kind (3) 14:5 71:22 157:4
insolvency (1) 140:18	interrupt (1) 177:13	JOB (1) 1:19	110:1 111:1 112:1	kinds (1) 64:8
insolvent (1) 141:2	intraday (5) 40:12 82:20 83:18,25 89:3	John (2) 68:8 101:9	113:1 114:1 115:1	knew (17) 11:14,16 20:20 22:19 42:6,10 44:11 54:6 60:3 73:10 96:14 97:6 114:20 132:4 132:11,19 195:25
instance (2) 24:3 26:18	introducing (1) 136:20	joint (1) 85:6	116:1 117:1 118:1	know (116) 5:10 9:21 13:15 14:11 15:20 20:25 23:14 23:19 27:16,21 28:14,15,17,17 31:13 33:10 41:11 41:25 42:4,5 43:9 45:11 47:14 48:20 49:5,13 53:22 58:17 58:20 59:11,19,20 60:6 61:9 62:15 64:19 66:6 70:3 73:25 74:8,10 76:17 91:19 92:3,4 93:11 93:15 94:2,9 96:13 96:24 98:4,21 104:20,24 105:6 107:16 108:14 115:25 116:9,10 121:5,6,9,10,20,21 124:18,19 128:25 131:12,20 132:8,10 134:12 136:7,8 141:14 143:4,12,13 145:5 148:2 156:14 156:15 159:11 162:4 173:9 175:6 177:13,14 178:2,13 179:11 190:12,13 190:13,21 193:12 195:10,11,17 197:3 197:3,9,16,22,25 198:16,18,24 199:8 199:10,18 201:12 206:9
instances (1) 140:9	investigation (1) 93:18	JONES (1) 3:3	119:1 120:1 121:1	
institutional (3) 144:20 147:15,23	involuntarily (1) 199:4	JPM (2) 173:2,6	122:1 123:1 124:1	
instruct (10) 6:24 11:6 107:17 131:17 132:23 150:19 154:5 163:9 182:16 188:20	involve (1) 55:18	JPMC (2) 173:5 174:10	125:1 126:1 127:1	
instructing (1) 13:21	involved (38) 6:5 7:4,5,12 10:19 11:16,19 12:15 15:6 15:11 18:18 24:7 39:19 42:12 44:12 49:2,4,6 50:23 58:12,15 65:13 91:3 102:20,22 107:11 126:25 127:14,18 133:10,19 140:7 151:11 153:20,24 160:5,6 172:14	JPMorgan (5) 127:19 128:16,22 129:7,9	128:1 129:1 130:1	
instruction (2) 152:24 164:22		jurat (1) 206:16	131:1 132:1 133:1	
instructions (1) 135:21		jurisdiction (1) 200:2	134:1 135:1 136:1	
insufficient (5) 181:6,24 182:5,9 185:12		jurisdictions (11) 21:17 137:5 138:5,16 138:19 139:16 140:15 194:12,25 195:3 199:24	137:1 138:1 139:1	
intellectual (1) 187:10		jurisdiction's (1) 139:21	140:1 141:1 142:1	
intend (1) 28:9	involvement (2) 133:24 134:16		143:1 144:1 145:1	
intended (3) 122:25 187:14 204:19	issue (3) 85:8 179:4 195:17	K	146:1 147:1 148:1	
intending (2) 33:8 146:5	issued (1) 57:15	K (203) 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1	149:1 150:1 151:1	
intensely (2) 135:2 140:7	issues (7) 58:16 77:21 78:7,23 79:2 107:11 137:14		152:1 153:1 154:1	
interacted (1) 146:18	J		155:1 156:1 157:1	
interactions (1) 10:24	J (2) 3:12,17		158:1 159:1 160:1	
interchangeable (1) 88:23	James (3) 9:19 27:20,22		161:1 162:1 163:1	
interest (9) 84:20 85:13,16,23,25 86:2 172:25 176:21 180:20	Japan (5) 139:10 198:5,8,11,15		164:1 165:1 166:1	
interested (3) 25:18 26:9 209:18	Japanese (5) 67:2 74:25 198:13 199:14 203:4		167:1 168:1 169:1	
interesting (3) 52:21 170:23 187:10	Jeff (5) 10:3 19:10 116:17 183:18 192:13		170:1 171:1 172:1	
interests (2) 163:23 176:4	Jennings (6) 10:3,5 19:10 116:17 183:18 192:13		173:1 174:1 175:1	
intermediary (1) 68:17	Jerry (2) 24:15 35:12		176:1 177:1 178:1	
intermediate (1) 122:19	Jim (2)		179:1 180:1 181:1	
			182:1 183:1 184:1	
			185:1 186:1 187:1	
			188:1 189:1 190:1	
			191:1 192:1 193:1	
			194:1 195:1 196:1	
			197:1 198:1 199:1	
			200:1 201:1 202:1	
			203:1 204:1 205:1	
			206:1 207:1	
			Kansas (10) 20:22,24 43:22 44:5,6 44:13 205:9,12,14 205:16	
			KAY (2) 3:22 178:16	
			keep (4) 67:7 71:18 125:5 164:18	
			keeping (1) 167:25	
			keeps (1) 81:13	
			Kenneth (8) 1:13 2:6 5:2 207:8,14 209:10 210:5,10	
			kept (1) 120:15	
			key (2) 148:8,11	
			Kim (2) 24:24 35:12	
				knowing (2) 26:9 180:11
				knowledge (29) 27:6 30:15 33:4,15 39:10 40:2 41:7 43:2 51:7 52:17 73:20 90:17 93:9 104:12 128:22 129:24 134:10,11 136:6 139:25 141:13,19 142:8

155:11 156:20 172:19 178:10 190:9,23 known (7) 20:15 32:17 58:3 61:14,21 71:6 147:13 knows (2) 93:2,8 Kong (4) 199:17,20,22 200:2 Korea (4) 201:12,13,18,25	7:24 8:16 late (3) 8:25 36:24 205:7 latest (1) 70:24 latitude (1) 15:24 law (3) 5:11 38:23 141:16 Lawton (4) 68:8,14,18 101:10 lawyers (2) 11:14 168:7 lay (1) 47:4 layman (1) 118:12 layman's (1) 117:23 LBi (79) 6:6 21:5 36:17 67:15 77:16,25 103:24 104:2 105:3,6,9,15 106:10,10 107:4 108:18 109:11 111:7 114:6,16 115:15,23 116:10 117:17 118:4,16 120:13,13,15 124:7 125:14 130:13,23 131:8,23 132:14 133:22 134:17 136:19 140:2,16 142:20 145:23 146:12,20,23 160:22 162:13,20 162:25 163:15,22 164:3,20 167:3,10 177:17 189:23 190:7 191:25 194:18,21 195:3,10 195:10,11,20 196:5 196:7,25 197:5,11 197:12,17,18 198:8 198:10,15 205:13 LBIE (5) 74:14 106:9 145:24 195:6,10 LBi's (22) 6:8 36:15 75:22 77:23 106:11 116:12,21 123:21 124:25 127:3 134:17 136:4 141:20 142:9 146:17 176:14 179:12,12,14	194:18,19 199:19 LBSF (1) 195:10 lead (2) 64:19 188:14 leading (2) 17:25 34:13 learn (7) 13:10 33:20 42:7,8 53:10 78:13 154:22 learned (7) 14:6,11,20 132:24 133:4 135:7 179:23 leave (2) 15:23 133:18 leaving (3) 61:5 125:6 139:18 lecture (1) 89:23 led (6) 27:19 36:15 116:16 189:20 190:11,18 left (1) 84:8 legal (6) 37:4 88:8 92:24 136:15,16 145:23 legally (1) 93:4 legislation (1) 124:10 Lehman (196) 1:7 3:4 7:12 8:10,13 9:24 10:4,6,8,13,21 11:2,3,23 12:3,16 12:23 13:3,11 14:25 16:9,15 17:2,6,21 18:6,19,21 19:4,7 19:19 20:3,23 21:5 21:9 23:9,11,15 24:8 25:20,21 26:20 27:15 28:2,3,13,16 28:20,21,23 31:4,8 31:10 32:15,20 33:5 33:17 35:3 37:23 38:5,13,15,24 39:23 40:4,9 41:19,25 42:23,25 43:11 44:7 47:22,23 48:16 49:19 50:5 54:3,25 58:21 59:4 60:15 61:8,15 62:5 64:6 65:11 67:13,14 68:24 70:15 73:7 74:9,11,13 76:19 80:13,14 81:6 82:4	82:12,17 84:19,23 90:18 91:6,18 92:11 92:24 94:23 96:5,7 96:15 97:7,23 101:16 104:16,24 105:5,13,23,24 106:8,23 108:19 109:11,16,22 110:6 110:8 111:19 112:5 113:18,25 114:12 114:15 115:6 118:12 124:15 125:2,12,23 127:13 127:18 129:25 132:13 133:12 134:18,20,23 135:16 137:13,25 138:2,4 140:17 142:10 144:4,16 145:3,11,22 147:4 147:24 148:16 149:5,17 150:21,24 152:16 157:13 161:14,20 162:13 171:21 178:5 182:8 182:19,22 183:2,6 183:13 184:5,10 185:5 192:14,23 193:5 195:22 198:23 199:11 201:11,18,24 203:18 205:22 Lehmans (2) 35:6 82:3 Lehman's (54) 7:14 8:4 13:12 15:8 21:20 25:12 26:2 27:9 30:11 34:15 35:23 38:22 39:2,8 39:9,22 40:15 41:8 41:15 44:20,21 50:25 51:8 54:14 55:11,16 56:15 62:14 64:16,18 66:5 66:10 69:18 70:5 74:2 107:12 113:3 127:2 135:16 136:24 144:19 145:16 147:6 151:12 154:2,12 156:4 159:19 169:14 171:9 176:14 183:15 185:8 186:5 Lehman-Barclays (1) 144:14	letter (56) 68:3 100:24 101:23 102:3,14,23 103:17 104:5 107:25 108:17,21 110:2,23 111:7,18 113:21 114:6,18 116:3,8,14 117:11,15 119:15 119:18 120:10 122:17,21,23,23,24 122:25 123:10,15 123:17,19,24 124:2 124:3 125:10,17 126:17,19 135:23 152:4,6 154:21 155:18 172:20 173:11,18 196:3,19 196:20 197:2,20 letters (5) 151:22,24 152:5,9,17 Let's (3) 163:10 182:6 186:3 level (15) 11:13 16:18 17:24 25:16 44:10 61:13 61:21 62:20 77:22 94:15,17 179:7 190:16 195:6,6 levels (4) 38:14 180:12,18 181:9 liabilities (2) 79:21,25 liability (3) 104:7 200:5,16 liaison (1) 160:4 lien (3) 176:13,18 177:11 limited (5) 104:7 110:24 137:19 139:5 151:14 limiting (1) 22:4 line (6) 75:16 92:4 163:3 175:20,21 208:6 liquidate (6) 31:2 55:3 88:2 181:8 182:2 206:14 liquidated (12) 32:22 33:12 77:9 139:17 198:16,18 198:20,21,23 199:5 205:19 206:4 liquidating (1)
---	---	---	--	---

180:21 liquidation (2) 31:17 87:25 liquidity (2) 50:12 184:15 list (4) 17:2 20:9 28:3 46:4 literally (1) 87:25 litigation (1) 178:9 little (22) 6:13 9:18 12:17 24:23 24:23 55:14 60:24 61:2 80:10 86:20 109:14 118:8,10 134:22 135:11 146:9 147:10 158:4 165:18 168:7 195:16 198:4 LiveNote (1) 2:11 Liz (3) 9:19 27:19,22 LLC (5) 104:2,10 122:19 123:16 196:8 LLP (5) 2:7 3:3,8,13 4:3 local (2) 139:21 141:16 location (3) 81:5 137:10 177:7 locations (1) 80:18 locked (4) 96:8,15 97:9 140:22 long (2) 19:21 121:22 long-term (1) 185:9 look (3) 70:17 90:2 102:25 looked (4) 151:23 166:15 196:4 197:17 looking (11) 12:21 25:17 55:25 71:21 116:6 117:25 121:24 133:15 144:11 157:25 174:14 looks (2) 103:9 174:16 losing (1) 149:7	loss (2) 36:16 148:11 lost (2) 142:5 165:2 lot (7) 44:18 64:20 66:6 127:17 147:22 162:16 198:16 LP (1) 163:7 lunch (1) 176:3 <hr/> M <hr/> M (1) 3:22 Macquarie (2) 22:14,17 Madison (1) 3:20 magnitude (2) 36:2 184:19 maintain (4) 88:5,9 118:6,18 making (4) 33:3,7 82:22 150:6 Malaysia (1) 202:20 manage (3) 38:18 39:9 181:3 management (1) 150:10 manner (1) 161:24 March (3) 1:15 2:2 209:20 margin (33) 30:13 36:8 38:18 41:16,17,22 57:15 57:19 61:18 84:2 86:15,16 97:18 110:12 177:8 181:4 181:22 182:8 183:21 184:4,6,14 184:17,21 185:5,12 191:18 192:17 193:2 200:20,20 201:2,9 margins (2) 82:21 185:2 mark (4) 41:21 50:13 95:9 120:20 marked (22) 5:17,20 91:23 98:16 98:20 120:11,21,25	126:3,7 143:2 152:2 153:6 154:20 156:12 167:19,23 169:5 171:25 172:4 174:22,25 market (21) 38:21 41:22 50:13 54:20 77:4 79:17 91:17,23 92:9 95:9 98:6,7 147:15 148:24 184:12,16 185:18 193:5 202:17,23 203:4 markets (36) 11:21 16:13,20,21 17:3,5,7,11,17 18:8 22:20 26:9,10 50:11 69:8,9 77:7 79:3,11 81:19 89:13 90:16 91:21 95:9 98:8 104:22 105:3,5,7,10 135:8 144:13 199:7 199:14 202:25 206:10 market's (1) 97:2 market-based (1) 86:25 market-related (1) 86:8 Markman (2) 101:12,15 marks (1) 63:7 marriage (1) 209:17 marry (1) 181:6 material (1) 99:9 math (2) 175:22,25 matter (18) 5:12,25 6:15 11:9 20:10 21:4 27:25 43:14 64:25 65:17 65:25 70:16,23 137:9 153:5 154:21 186:24 209:18 McDaniel (7) 52:7 53:25 54:13 173:20,24 174:7,12 mean (43) 19:18 47:6 50:6 60:2 65:18 66:15 69:5 70:10 76:7 77:3	78:7,9,16 86:2,19 87:9 93:4 94:17 98:5 105:25 106:17 108:13 109:19 110:3,15 112:12 115:17 124:3,6 125:10 127:4 138:3 145:5 148:5 149:3 149:20 150:7 159:3 162:10 169:17 171:17 177:12,14 meaning (2) 95:20 108:4 meaningful (1) 13:16 means (8) 65:23 85:25 110:5 137:25 149:23 150:3 151:9 160:16 meant (4) 111:14 142:3 171:14 196:13 mechanics (1) 133:11 meet (13) 61:19 81:3 86:8,22,25 87:7 92:6 96:17 97:18,25 149:7 177:2,8 meeting (32) 7:12,19,21,23,24 8:13 8:16 9:4,25 10:18 12:5,14 16:3,14 23:7 46:18 63:19,19 63:20,24 64:10,14 65:11 76:21 111:19 143:21 144:3 145:2 145:10 147:4 163:22 193:13 meetings (28) 6:5 7:16 8:21,22,23 12:9 14:22,23,23 15:14 16:4 18:5 27:12 46:22 63:21 64:6,9,11,15 66:8 75:20 77:22 94:7 127:14 143:11 148:15 150:23 161:10 member (17) 17:3,8,15,18 18:8 19:17 20:3,24 21:6 21:9 33:18 44:8,9 44:19 111:20 176:25 205:14 members (2)	16:21 136:21 memo (5) 144:5,7,9,10 146:4 memorandum (2) 143:21 145:22 memorialized (2) 56:18 58:2 memorializes (1) 58:9 memory (4) 21:3,8 22:14 43:4 mentioned (4) 33:22 69:4 101:11 179:22 Mercantile (3) 20:12 49:11 135:14 merchant (2) 6:9 85:7 Merit (1) 2:10 messages (1) 34:8 met (2) 82:21 186:13 methods (1) 115:21 middle (1) 165:3 midnight (3) 34:2,10,17 million (2) 144:22 183:22 mind (1) 77:15 minimum (3) 95:8 130:3 193:3 minimums (1) 159:20 Ministry (3) 75:3,6 198:5 minority (1) 18:25 minutes (1) 168:11 mischaracterize (4) 47:6 108:13 125:10 188:2 mischaracterizes (3) 14:19 57:13 165:17 missing (2) 20:7 197:24 misspoke (3) 18:20 182:4 201:21 mistake (2) 100:15 103:6 misunderstood (1)
---	--	---	---	---

47:5 MOF (1) 75:3 moment (12) 61:19 75:14 89:21 91:14 98:21 100:5 118:22 121:4 143:3 156:13 172:8 175:5 Monday (10) 23:8 25:5 37:24 50:19 50:21 55:8 57:16,22 70:24 144:3 Monday's (1) 185:22 money (26) 57:20 81:3,13 83:11 84:4,8,11 86:10,15 88:10,17 89:2 90:18 112:22,24 113:3 120:8 137:23,24 140:22 200:17,17 200:18,24 201:4,7 monies (10) 42:12 84:12 89:8 97:18 120:15 137:4 137:18 164:19 165:12 201:15 monitor (1) 40:24 monitoring (1) 40:11 months (2) 56:13 153:19 morning (23) 5:8,9 7:18 8:13,15 31:22 32:2 34:17,21 49:9 60:21 143:23 151:23 153:3 157:24 158:7,10 160:15 177:5 178:21 179:6,23 183:17 move (16) 120:8,12 127:12 129:19 137:7,8,10 140:6,25 141:6 199:25 201:23 202:3 203:16 205:20,21 moved (41) 24:21 40:3 67:13 87:21 128:12 129:16,23 130:13 130:19,20 131:3,7 131:14,22 137:5 138:11,20 139:4,5,7	139:8,9,13,24,24 140:10,23 141:12 142:16,16 198:6,7 199:23 200:8 201:16 204:3,6,7,24 205:11 206:11 movement (8) 26:12 36:8 116:7 128:6 129:8 133:20 134:24 185:19 movements (5) 50:11 119:24 128:14 134:21 193:5 moves (1) 184:16 moving (15) 18:19 24:7 25:20 30:9 40:22 95:10 98:9 111:5 118:24 127:16 129:17 133:15,16 134:16 200:8 muddled (2) 176:7,9 multiple (2) 121:14,17 mystified (1) 99:22 <hr/> <div style="text-align: center;">N</div> <hr/> N (3) 3:2 4:2 210:3 name (9) 5:10 10:11 35:13 43:19,24 74:25 81:6 101:10 161:23 named (2) 67:20 139:17 names (3) 9:23 27:23 67:21 Natalie (2) 101:11,24 nature (12) 25:17 26:2,7,23 27:8 31:7 32:14 41:12 59:12 60:16 61:22 179:19 Navin (4) 52:6 53:24 54:13 58:23 near (1) 143:9 necessarily (3) 21:13 88:10 189:10 necessary (1) 82:14	need (14) 87:22 106:4 112:2 120:17 151:10,16 160:13 164:14 167:8 169:11 171:7 171:20 193:2 197:15 needed (7) 34:19 40:24 49:23 71:19 87:6 164:18 177:2 needs (1) 146:9 negotiate (4) 67:11 73:21 162:20 162:25 negotiated (3) 102:12 129:12 136:11 negotiating (5) 58:12,17,20 161:13 164:6 negotiation (4) 13:14 102:14 153:21 153:24 negotiations (5) 13:18 14:4,24 15:7 129:13 neighborhood (1) 180:21 Neil (8) 3:17 5:10 47:11 60:19 168:5 177:12 189:11 192:4 net (5) 88:9,9,11 103:25 196:6 never (7) 27:3 33:13 62:7 80:4 159:25 160:9 169:7 new (23) 1:3,14,14 2:8,8,12 3:6 3:6,11,16,16,21,21 4:6,6 20:16 122:17 201:2 208:2,3 209:3 209:5,8 newly (1) 104:6 news (1) 37:13 non-CME (1) 177:6 non-Japanese (1) 202:23 non-performance (4) 148:19 149:4,5,8 non-performances (...)	148:21 non-U.S (11) 21:3 79:17 81:18 89:12 105:4,7,14 106:23 107:12 127:25 195:2 normally (1) 109:3 North (1) 3:10 Notary (3) 2:11 207:18 209:7 noted (1) 207:6 notes (5) 12:5,9,11,11 145:22 November (2) 173:19,20 number (21) 23:25 34:10 67:18 75:22 81:22 85:4 98:25 120:5 121:2 121:11,17 122:6 128:10 129:12 149:11 158:3 168:17 170:8 172:6 177:16 194:13 numbers (6) 94:18,21,25 96:10 121:15 122:2 NYMEX (1) 20:15 <hr/> <div style="text-align: center;">O</div> <hr/> object (46) 6:24 11:5 28:6 32:23 36:22 38:8 40:17 53:14 59:15 74:5 85:5 90:23 92:22 95:16 96:19 97:13 106:15,19 125:4 130:8 131:9,16,24 132:16,17 143:24 145:4 146:7 150:18 156:5 159:21,22,23 160:25 161:6,17 163:8 164:21 168:3 171:11 175:17 176:16 182:15 183:7 188:19 191:22 objection (83) 11:25 13:5,20 14:18 15:3 22:11 26:5 29:10 36:24 53:15 54:17 57:12 59:25	60:18 62:2 63:2 78:25 80:16 82:7 83:2,22 84:21,25 85:21 86:18 90:21 91:11 92:14 94:4 95:25 97:12 105:18 106:3 107:6,17 116:25 117:19 118:7 125:9 127:7 129:3 130:7 131:25 136:25 138:13,22 141:23 142:12 147:20 149:24 151:18 152:10,22 152:23 154:4,13 155:13,23 159:24 162:2,21 163:16 165:16 166:12 167:11 171:23 173:13,15 183:23 186:8 187:25 189:6 192:4,19 193:8,21 195:23 197:13,21 199:21 201:20 203:21 205:25 obligated (1) 96:6 obligation (2) 39:25 96:8 obligations (38) 33:17 38:23 55:16 56:15 81:3 82:11,25 86:25 87:7,8,9,10 92:6 96:17 97:8 111:19,23 113:2,6 127:3 135:15 136:5 138:5,6 141:20,25 142:9,17 149:9 159:8 165:13 166:7 177:2 186:6,12,13 189:23 190:7 obstacle (1) 77:14 obtain (4) 18:9,16,16 24:6 obtained (4) 128:20 191:3,5 196:24 obviously (9) 9:6 41:6 50:10 90:8 111:24 132:21 175:20 181:6 183:19 OC (1) 172:16 OCC (68)
---	---	--	--	---

12:4 45:2 46:24 47:8,19,23 48:2 51:15,17,18,25 52:4 52:12,13,14,18,20 53:10,22 54:3,7,16 54:22 55:10,20 56:7 56:14,16 57:23 58:3 58:10,21,23 111:25 134:4 157:12,16,23 158:14,18,25 159:3 159:8 172:14,20 181:5,23 182:8 184:22,23 185:5,7 186:6,11 187:16 188:7,12 189:17,21 189:23 190:5,7,9,17 191:8,19 193:6,10 occur (1) 84:2 occurred (5) 31:18 60:4 186:12 188:9 192:22 OCC's (7) 47:24 54:14 157:20 185:2,21 193:3,11 October (5) 129:21,24 130:13 131:15,22 office (7) 24:4 65:8 66:4,5 68:10,11 166:25 officers (2) 19:4,7 offices (2) 8:4 70:5 oftentimes (1) 72:15 Oh (2) 99:17 122:15 okay (35) 22:7 30:3 45:4 48:7 60:23 61:4 111:5 113:16 114:2 118:11 122:8,15 131:4 138:15,18 145:20 147:2 151:20 156:9,21 167:18 168:10 169:20 174:21 177:22 178:7 182:24 183:15 186:3 189:25 190:10 192:6 193:19 196:21 205:2 once (1)	18:24 ones (10) 9:20 28:13 161:11 162:14 182:25 183:9 206:9,10,12 206:13 ongoing (2) 137:4,18 onwards (1) 91:3 on-site (3) 70:4,15,21 oOo (1) 207:7 open (8) 63:12,13 108:3 109:4 110:14,18,18 180:20 opened (1) 11:21 opening (5) 50:19,21 57:4,15,22 operate (1) 69:9 operates (1) 145:23 operations (3) 27:12,16 203:7 opinion (2) 92:24 156:2 opportunity (2) 15:19 151:6 opposed (2) 142:2 204:10 opposite (1) 82:10 opposition (2) 5:16,24 options (11) 12:3 45:2 47:20,24 51:20 52:19,25 54:19,21 55:7 159:2 order (14) 36:2 67:12 70:18 72:25 73:21 101:2 128:13 135:19,21 170:13 187:16 193:4 202:11,14 orders (1) 184:18 organization (10) 29:9 85:13 113:20 134:10 136:3 158:16,19 176:13 194:5 205:23 organizations (12)	19:16 20:2,9 22:9 23:21 24:2 29:13 46:5,7 115:8 141:6 176:5 original (1) 200:23 outcome (1) 209:18 outside (21) 19:17 20:3,5 21:12,22 22:5 23:12 24:15 52:4,7 104:25 105:7 105:10 106:8 133:14 136:24 138:12 165:24 173:10 203:11 205:24 outstanding (1) 110:11 oversight (1) 68:17 oversimplification (1) 202:10 oversimplify (1) 112:21 overstatement (1) 40:20 overtook (1) 144:8 overture (1) 72:3 overview (1) 144:17 owed (1) 172:17 owes (1) 110:11 owns (1) 82:23 Oxford (50) 3:17 5:7,10 19:20 48:7,13 60:22 84:24 93:2,7 95:24 98:12 98:18 100:6,17 106:18,20 121:20 121:22 130:10 142:3,21,24 155:15 156:17,19 159:23 161:4,9 163:10 167:25 168:10,14 168:24 169:19 170:2,6,22 171:2 173:15 177:19,24 178:4,10 181:17,20 192:5 204:11 207:2 210:6	P P (4) 3:2,2 4:2,2 pack (1) 172:15 page (20) 75:15 99:8 102:25 103:3,6,16 107:24 108:24 110:22 111:6 118:24 123:3 149:10 156:16 170:10,15 206:15 207:12 208:6 210:4 pages (3) 121:12,18 207:10 paid (2) 41:22 84:13 papers (2) 5:16,25 paragraph (17) 6:3 36:13 103:18 107:23,24 111:6 117:25 118:25 144:15 145:19,21 149:11 160:19 161:22 162:9 163:6 163:23 paragraphs (1) 148:8 Park (2) 2:7 3:15 part (31) 7:14 19:5 21:23 47:21 83:6 88:9 93:18,19 114:13 117:2 120:10 136:9 137:11,11 140:14 146:25 159:3 160:22 161:8 167:2 167:8 169:14,23,24 170:23 172:13 179:2 190:2 191:2 201:8,22 participants (1) 160:21 participated (1) 63:22 particular (13) 12:4 35:11 48:4 49:17 64:22 85:12 92:18 125:15 127:16 128:16 136:18 154:11 156:3 particularly (10) 5:14 54:21 55:5 76:10 77:7 91:15 92:8	118:11,13 152:17 particulars (1) 26:8 parties (4) 16:22 133:4 182:19 209:16 partner (2) 45:14 101:5 partner's (1) 183:4 parts (2) 119:18 200:12 party (5) 140:12 150:22 168:23 178:13 192:2 pass (1) 54:10 passage (1) 196:9 Paul (1) 101:9 pausing (1) 146:14 payment (1) 200:4 pays (1) 38:18 Pearl (1) 3:10 people (27) 10:3 15:17,20,22 21:8 24:2,14 27:12,16 34:10 54:6 58:16,22 64:20,23 67:19 70:7 80:5 101:21 151:7 161:10,12 162:14 163:21,22 164:7 203:8 percent (3) 103:25 180:21 196:6 percentage (1) 88:12 perfect (1) 68:5 perform (10) 30:12 33:17 38:22 39:22,23 42:23 44:21,22 92:11,17 performance (4) 39:25 55:7 68:23 69:11 performed (1) 91:7 period (11) 14:17 23:5 51:23 77:6 86:5 91:2 102:13
---	--	--	---	---

135:2 136:10 147:24 148:4 permission (7) 108:22 109:4,7,24 120:12,17 196:24 permitted (2) 119:24 158:20 person (10) 10:2 37:6,9 43:25 44:3 68:2 73:10 125:25 160:3 161:25 personnel (2) 6:6 7:13 perspective (2) 130:5 193:11 pertains (1) 161:15 Pg (1) 208:2 Pgs (1) 208:2 phone (7) 6:21 23:25 34:11 65:9 66:6 67:4 72:16 Phupinder (1) 35:13 picks (1) 117:21 piece (1) 29:6 pieces (1) 28:14 pin (1) 37:14 place (9) 8:2 15:2 52:9 55:21 64:25 102:15 129:14 134:8 145:2 placed (1) 140:13 plan (1) 157:19 players (2) 128:11,15 Plaza (2) 2:7 3:15 please (27) 7:20 11:9 13:24 18:12 29:20 42:13 51:13 79:9 98:22 100:23 101:19 103:17 110:15 121:6 122:11 126:11,13 127:9 129:2 134:15 143:5 165:21	168:12 182:24 186:4 191:23,23 pledge (3) 80:24 81:10 187:15 pledging (1) 186:11 plus (1) 210:18 pocket (1) 86:10 point (26) 29:15 34:13 37:13 39:15 42:5 47:18 54:8 60:8 63:6 69:11 70:8 73:10 81:25 92:4 95:14,22 110:22 111:24 113:15 117:5 166:15 187:12,24 193:11 196:17 201:4 pointed (1) 100:10 points (5) 62:11 145:11,13 180:10 190:11 portion (2) 169:12 180:19 position (32) 32:6,9,12 35:2 44:17 63:14 76:22 78:13 78:20 91:23 107:14 110:17,20 112:4 137:12 179:23 180:13,14,16,18,22 180:23 181:2,5,7,25 183:14 184:9,11 185:15,21 195:9 positions (226) 16:9,12 17:17,19,22 17:23 18:7,19 20:13 20:20,25 22:20 24:8 25:13,18,20 26:3,8 26:10,11,14,25 27:10 28:4,5,20 30:9,25 31:4,7 32:21 33:11 34:15 35:3,6,23 36:5,11 36:15 37:23 38:2,3 38:5,16 39:6,9 40:3 40:8,22,23,24 41:9 41:13,14 42:11,17 42:18,19,25 43:11 44:21 47:22 48:17 49:18 50:5,7,9,22 50:25 51:9,21,24	52:13,14,18,23,25 53:3,7,10,22 54:2 54:15 55:4 59:13,20 60:9,12,16 61:6,10 61:12,23,24,25 62:6 62:13,16,19,25 63:5 63:7,16 67:12 73:7 74:2,9 76:14 77:6,8 77:24 79:4 80:8,9 86:7 87:20,21 97:3 98:11 104:16,21 108:3 112:20 127:13,23,25 129:15,16 133:16 133:21,22 134:17 134:21,24 135:9,25 136:5,23 137:5,7 138:3,4,11,20 139:4 139:7,13,17,24 140:9,13,23,25 141:6,12 142:10,16 142:20 148:23 149:6,7 166:19,21 166:22 178:22 179:7,8,10,11,12,13 179:13 181:10 182:9 183:22 185:3 185:7,9 187:18 191:20 193:5,25 194:5,17 195:13 197:7 198:2,6,7,9 198:10,15 199:2,3,3 199:11,19,22,25 200:6,7 201:13,16 201:18,23 202:4,19 203:16,18 204:3,6,9 204:14,16,20,24,25 205:10,17,18,18,19 205:22 206:4,11,14 possible (9) 45:14 46:8 56:11 62:23 65:10 71:17 75:7 121:7 169:11 post (4) 79:11 97:5 185:6,19 posted (9) 33:6 36:9,17 41:17,20 42:2 182:8 185:12 191:19 potential (5) 6:7 7:13 11:2 144:3 184:13 potentially (8) 49:24 66:24 73:8 74:20 84:9 112:9 113:2 165:20	practical (5) 75:23 76:24 77:10 78:10 79:6 practically (1) 92:8 practice (4) 12:8,10 88:6,7 preceded (1) 55:23 precedent (1) 137:17 preceding (1) 119:10 precise (8) 56:11 61:22 62:19 71:15 96:10 105:3 163:14 174:8 precisely (8) 6:20 10:2 24:22 25:4 31:15 36:19 116:15 173:22 premier (2) 147:14,18 prepared (6) 34:14 49:18,21 50:4 55:15 116:7 preparing (1) 51:4 presence (10) 133:3 150:21 182:18 182:22,25 183:6,9 183:12 191:25 192:22 present (5) 9:25 65:5 70:15 148:16 192:9 presented (1) 148:24 president (1) 35:14 presumably (3) 53:16 159:7 203:24 pretty (3) 174:17 181:5 198:25 previous (1) 125:19 previously (11) 100:25 120:14 123:18 142:18,20 143:2 153:6 154:20 156:12 169:21 201:24 pre-meeting (1) 8:9 primarily (3) 72:13 100:19 135:7	primary (2) 24:12 67:19 principle (2) 187:8,22 principles (1) 86:21 prior (23) 10:9 11:20 13:4 31:8 32:2 42:25 53:25 56:24 93:20 96:14 102:11 119:11 122:21 126:21 133:8 173:18 177:20 183:25 185:6,25 191:16 198:23 206:4 privilege (9) 53:12 131:25 152:23 170:17,23 188:25 191:3,6 193:23 privileged (6) 107:19 168:16 170:11 188:21 189:2 192:12 probably (23) 8:20 18:22 19:14 23:16 24:10,14 43:18 44:17 47:12 66:23 70:24 71:4,9 72:11 80:8 85:3 102:7,11 116:16 117:10 134:25 177:9 201:10 problem (5) 8:19 21:23 76:16 180:15,16 problems (1) 77:15 proceed (1) 35:5 process (10) 26:16 40:22 41:4 49:3 49:6 127:12 128:13 137:18 168:20 203:16 produced (5) 100:10 168:16 170:7 170:11 178:8 production (2) 100:16 121:8 products (1) 31:10 Professional (1) 2:9 program (1) 79:15
---	--	--	--	---

<p>progressed (2) 18:5 72:20</p> <p>prohibited (1) 120:2</p> <p>prohibition (2) 119:17,22</p> <p>prohibits (1) 119:5</p> <p>project (2) 137:3,16</p> <p>promises (1) 174:19</p> <p>pronounce (1) 35:14</p> <p>property (10) 119:7 130:14,18,22 130:22,23 131:6,8,8 132:14</p> <p>proposal (1) 162:12</p> <p>proposed (1) 172:22</p> <p>proposing (1) 164:4</p> <p>proprietary (69) 6:8 16:9 25:12 26:3 26:20,22 27:9 28:3 31:4 34:15 35:3,6 35:23 36:15 38:3,6 39:3 40:23 42:12,18 44:21 47:22 48:17 54:15 55:19 60:5 62:13,16 63:16 68:24 69:18 77:23 78:19 79:14 87:20 108:19 109:12,15 110:23 133:21 134:16 148:23 149:6 151:13 166:21,22 179:10 179:15,15 193:25 194:5,11,15,16,20 194:22 195:5,7,12 198:15 204:10,22 204:25 205:5,22 206:3,9,13,14</p> <p>propriety (1) 31:7</p> <p>protect (2) 112:22 193:4</p> <p>protected (2) 80:8 128:12</p> <p>protection (4) 79:21,25 80:7 81:9</p> <p>protective (1) 170:13</p>	<p>provide (11) 16:15 17:2,6,9,14,21 18:7 28:2 59:23 174:6,12</p> <p>provided (7) 44:19 88:18 94:11,14 94:19 116:11 174:7</p> <p>provides (2) 80:13 186:11</p> <p>provision (6) 81:25 82:2 170:13 196:19,20 197:20</p> <p>provisions (3) 111:10 117:21 125:15</p> <p>Pruszyński (4) 1:18 2:9 209:7,23</p> <p>Public (3) 2:12 207:18 209:8</p> <p>purchase (15) 10:25 11:3,23 13:11 13:14,19 14:16 15:8 59:7 60:15 133:12 153:5 155:7 156:7 201:23</p> <p>purchased (1) 33:11</p> <p>purpose (12) 10:18 12:14 67:5 70:14 72:17 75:5,7 110:16 117:18 119:14 177:4 184:8</p> <p>pursuant (18) 79:12 81:2 103:18,23 111:9 117:21 118:18 125:7,15 136:14 141:16 170:12 172:17 196:4 197:19 202:2 202:9,10</p> <p>put (13) 36:5 68:25 82:14 86:10 88:18 134:7 152:25 198:22 200:16,17,18,25 201:7</p> <p>puts (2) 83:17 88:11</p> <p>p.m (5) 34:2,9 91:24 175:2 207:6</p> <hr/> <p>Q</p> <hr/> <p>qualification (1) 15:16</p> <p>qualified (1) 160:14</p>	<p>question (74) 7:16 13:23 15:12 22:4 25:22 28:7,9,10 29:22,23,24 32:24 33:2 34:23 40:18 54:4 58:18 59:24 60:24 62:12 66:12 74:6 83:3,23 85:2 85:11,24 90:25 92:8 93:8 95:17 96:20 97:4,6,14,21 107:15 125:19 130:9,16 131:10 133:5 138:15 139:18 142:6,15 143:25 145:5,7 146:8 150:19 152:18 154:14 155:24 159:22 161:2,3,4,7 163:9 164:22 165:2 165:4 167:13 171:3 171:6,12,17 174:2 176:17 187:11 188:20 193:16 200:13</p> <p>questioner (1) 176:11</p> <p>questioning (2) 163:4 177:13</p> <p>questions (23) 11:8 19:4,8 42:22 76:21 96:2 100:19 132:19 154:23 168:9 170:24 178:12,16 181:14 181:16,18 183:4 191:16 193:24 195:16 204:18 207:3,4</p> <p>quick (1) 73:15</p> <p>quickly (1) 154:17</p> <p>QUINN (1) 3:18</p> <p>quite (5) 57:4,21 74:23 127:16 128:10</p> <p>quote (1) 108:8</p> <p>quotes (2) 119:7,11</p> <hr/> <p>R</p> <hr/> <p>R (3) 3:2 4:2 209:2</p>	<p>Radhakrishnan (5) 68:2,14,16,18 102:21</p> <p>raise (2) 19:7 187:10</p> <p>raised (2) 19:4 76:21</p> <p>Raisler (310) 1:13 2:6 5:1,2,8 6:1,4 7:1,7,11 8:1 9:1,24 10:1,22 11:1,19 12:1,13 13:1,9 14:1 15:1 16:1 17:1 18:1 19:1,12,25 20:1 21:1 22:1 23:1,10 24:1 25:1,3,11,24 26:1 27:1,6 28:1 29:1,17 30:1 31:1 32:1,14 33:1,10 34:1 35:1 36:1 37:1 37:22 38:1 39:1 40:1 41:1 42:1 43:1 43:3 44:1 45:1,5 46:1,25 47:1 48:1 48:14 49:1,9 50:1,7 50:23 51:1 52:1 53:1 54:1,11 55:1 55:10 56:1 57:1,7 58:1 59:1,6 60:1 61:1,20 62:1,21 63:1 64:1,24 65:1 65:12 66:1,10 67:1 67:5 68:1,12 69:1 70:1,4 71:1 72:1,18 73:1,25 74:1 75:1 75:14 76:1,17 77:1 78:1 79:1,24 80:1 81:1,9 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1,2 90:1,17 91:1 92:1,11 93:1 94:1 95:1 96:1,2 97:1,5 98:1,19 99:1 100:1,18 101:1 102:1 103:1 104:1 104:15 105:1,22 106:1 107:1,25 108:1,17 109:1 110:1 111:1 112:1,3 113:1 114:1 115:1,5 116:1,10 117:1 118:1 119:1 120:1 120:24 121:1 122:1 123:1,9 124:1 125:1 126:1,6,25 127:1 128:1 129:1 130:1 131:1 132:1,8 133:1</p>	<p>133:10 134:1 135:1 135:25 136:1 137:1 138:1 139:1 140:1 140:10 141:1,20 142:1,8,25 143:1,20 144:1 145:1 146:1 147:1,17 148:1,9 149:1 150:1 151:1 151:11,22 152:1 153:1,4 154:1,19 155:1,11 156:1,10 157:1,21 158:1,13 159:1,16 160:1 161:1,11 162:1 163:1,3 164:1,14,17 165:1,6 166:1 167:1 167:22 168:1 169:1 169:4 170:1 171:1,4 172:1,3 173:1 174:1 174:24 175:1 176:1 177:1 178:1,11,20 179:1 180:1 181:1 181:21 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1,17 192:1 193:1 194:1 195:1,18 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1,12 205:1 206:1 207:1,2 207:8,14 209:10 210:5,11</p> <p>ran (3) 10:7 143:17,18</p> <p>range (1) 148:20</p> <p>rapid (1) 97:2</p> <p>rapidly (3) 77:7 95:10 98:9</p> <p>rarely (1) 12:11</p> <p>reach (13) 18:14 19:12,15,25 21:20 22:8 23:10,14 45:17,25 54:8 75:9 177:6</p> <p>reached (16) 13:2,11 20:6,10,22 21:4 23:20 25:3 54:23 71:2,3,5,6,7 74:23 75:2</p> <p>reaching (6) 20:18 22:16 23:3 24:6</p>
---	--	---	--	--

<p>75:6,8 read (17) 13:23 14:2 37:13 51:13,14 107:9,10 108:23,25 132:3,5 145:14,16 153:18 175:20 193:17,18 readily (1) 76:10 reading (1) 117:10 reads (2) 103:23 118:25 ready (2) 47:12 168:14 real (2) 43:12 148:2 realize (1) 124:2 realized (1) 171:5 really (16) 8:8 11:17 27:3 36:22 42:10 45:22 54:5 59:4 80:4,15 92:20 146:16,25 176:2,20 199:8 reason (13) 15:15 158:9 159:9,10 208:8,10,12,14,16 208:18,20,22,24 reasonably (1) 192:7 reasons (4) 75:22 76:8,24 208:5 recall (58) 6:21 8:8 10:10 20:18 21:2 22:16 27:24 31:15,18,19 36:19 44:2,13 45:6 46:15 47:16 49:10,14,20 51:4,6 52:8 54:9,12 64:5 66:7 70:19 71:25 72:8 75:10,16 75:19 93:25 102:9 107:21 116:15 123:16 132:7 134:4 134:12,19 147:3,16 151:19 153:12,18 159:16 160:2 173:21 175:9,14 180:15,24 184:3 196:2 197:4 199:14 202:25 receive (1) 168:25</p>	<p>received (5) 34:5,5 95:5 114:16 124:14 Recess (4) 48:12 98:15 142:23 168:13 recipients (1) 102:16 recognize (4) 5:21 87:13 100:21 122:9 recognized (2) 82:10 158:18 recollection (48) 7:25 8:3,9,12 9:3,6 15:10,25 19:9 20:11 23:13 31:9,20 32:4 32:10 37:12 42:16 43:13 46:20 52:15 54:18 56:8,17 59:3 64:8 70:9 71:14 74:12,15,16 76:6 77:20 94:14,25 96:9 102:6 131:2 157:18 158:4,12 172:21 174:8,16 180:19 183:11 198:6 202:21 205:20 recollections (1) 63:21 record (17) 8:20 14:2 51:14 98:24 100:5,7,18 107:10 132:5 168:15 170:4 170:5 171:5 172:5 180:18 189:12 209:13 records (2) 70:17 77:16 recover (2) 137:17 172:17 red (1) 39:16 Reed (3) 2:7 3:13 5:11 refer (5) 78:7 88:21 111:3 121:23 204:19 reference (6) 76:24 79:7 85:4 125:17 168:22 169:2 referenced (5) 13:4 57:25 76:8 78:23 121:8 references (3)</p>	<p>81:15 123:17 158:3 referencing (1) 67:15 referred (2) 81:23 174:9 referring (9) 18:17 29:3 78:22 88:22 118:12 122:12 127:20 174:2 186:16 refers (2) 81:16,22 reflect (5) 49:15 106:21 143:21 144:25 145:6 reflected (3) 56:21 104:2 196:7 reflecting (1) 159:4 reflects (1) 144:11 regard (7) 12:18 17:12 67:14 117:7 119:23 127:10 128:23 regardless (1) 187:5 regime (4) 81:17 136:15 139:22 140:19 regimes (1) 136:17 Registered (2) 2:9,10 regulated (1) 114:2 regulation (6) 79:13 91:5,10 93:5 108:9 119:2 regulations (10) 89:24 97:8 98:3 108:5 111:11 117:22 118:6,19 125:7,17 regulator (2) 74:17 75:2 regulators (10) 16:10,22 64:4 66:10 66:20,22,24 67:3 141:8 198:13 regulatory (11) 82:2 111:9 112:15 113:24 123:22 124:8,9,16,25 125:6 125:14 rehash (1) 82:16</p>	<p>relate (3) 50:24 52:17 69:12 related (10) 12:2,23 13:12 15:8 37:16 38:2 78:3 150:10 202:14 209:15 relates (3) 105:25 124:11 156:4 relating (4) 69:13,18 77:23 179:4 relation (2) 62:24 160:21 relationship (1) 10:24 relationships (2) 21:25 23:4 relatively (4) 32:11 43:14 77:6 78:20 release (2) 139:12 202:23 released (4) 139:20 140:2 201:15 203:5 releasing (2) 136:18 198:14 reliable (1) 95:11 relied (1) 152:16 relief (1) 112:2 relocated (1) 129:19 rely (1) 191:15 remained (1) 64:19 remember (42) 6:20 8:6 9:22,23 10:2 10:5 22:13,21,23 23:17,18 24:22 25:2 25:10 35:17,20 36:25 37:3 43:16,24 56:5 64:15,22 67:21 71:2,7,13 73:13,16 74:22 151:24 158:2 176:6 178:24 180:4 182:21 183:20 186:5 194:2 196:9 196:12 205:16 remembered (1) 75:12 remind (1) 48:22</p>	<p>remit (1) 47:21 repeat (1) 60:20 repeating (1) 115:14 repetition (1) 163:20 report (1) 22:24 reported (2) 1:18 95:7 Reporter (3) 2:10,10,11 reporting (4) 23:5,6 27:22 64:3 reports (2) 76:13,23 represent (2) 5:12 186:23 representation (19) 113:14,17 115:12,18 115:20,23 116:2,11 123:11,20 124:14 124:24 125:14 187:15,19 190:9,19 190:22 191:7 representations (11) 81:14 114:11,14,16 115:2,4,6,10 152:16 152:19 153:2 representative (4) 6:22 37:4 44:4 47:8 representatives (12) 7:6,9 9:7,15,16,24 16:15 19:14 23:9 25:7 34:6 154:7 represented (6) 113:25 115:15 166:20 189:21 190:5 195:13 representing (3) 10:12 53:5 167:7 represents (1) 162:19 request (13) 50:14 54:2 56:2,15 57:2 100:24,25 117:12 126:18,22 168:25 170:14 173:2 requested (4) 16:2,8,17 117:15 requests (1) 76:12 require (1)</p>
---	--	--	---	---

<p>150:9 required (25) 39:24 91:4,10 92:6,11 92:17,24 93:4,4,10 96:5,12 113:13 118:5,18 124:10 130:4 149:16 150:16,25 159:19 184:15,20 185:5 188:13 requirement (6) 73:24 88:4,8 95:20 98:2 185:2 requirements (5) 86:22 88:12 120:8 149:12 193:3 requires (2) 164:23 183:8 resolved (2) 39:10 40:2 resource (1) 77:11 respect (50) 28:5 29:23,24 30:20 31:4 32:15,21 33:4 38:5 39:5 41:8,13 45:20 52:24 56:14 62:12 67:9 69:10 80:11 87:19 92:5 94:22 97:9 105:10 107:3 112:10 113:22 119:6 123:23,25 124:3 137:20 138:16,18 139:6 140:21 141:21 142:9 154:23 170:17 171:8 182:9 185:7 187:17 191:19 192:17 199:9 200:5 200:5 204:12 respective (2) 68:13 177:3 respectively (2) 135:7 176:25 response (7) 56:6 59:23 72:2,2 170:8 183:4 204:18 responsibilities (9) 45:17,24 67:10 69:5 69:24 71:11 127:6 158:22 179:21 responsibility (12) 18:13 19:11 27:3 50:22 56:20 71:18 165:15,19 166:8</p>	<p>188:9 193:7 203:11 responsible (8) 27:17 57:17 69:7 161:13 162:14 197:7 200:10 203:3 responsive (1) 133:5 rest (1) 145:19 restate (2) 106:5 109:13 result (9) 30:18 157:15 162:24 164:5 184:14 189:16,17,18 193:13 resulted (1) 36:7 results (3) 23:18 39:14 94:10 retired (1) 10:15 retread (1) 76:3 retrospective (1) 63:12 retrospectively (1) 95:10 return (4) 169:11,17 170:15 171:20 returned (6) 83:8,12 84:9 137:24 167:3,9 returning (1) 169:23 reveal (1) 6:25 revenue (1) 145:17 revenues (1) 144:21 review (9) 37:15 98:21 121:4 143:3 156:13 168:25 172:8 175:6 175:12 reviewing (1) 171:5 re-post (1) 200:20 right (32) 8:11 9:10 18:23 19:23 30:24 43:24 48:25 55:13 56:11 57:6,10 57:11 58:19 74:19</p>	<p>75:18 86:11 87:4 89:2,8 106:18 121:16 124:5 139:2 150:4 154:18 155:2 164:12 167:17 182:5 191:4 195:25 201:19 rights (9) 86:2,4 89:16,17 105:10 127:3 135:15 136:4 168:19 risk (14) 147:19 148:8,18 159:8 163:20 181:3 184:9 185:11,17,18 185:20,23 192:18 193:5 risks (5) 147:23 148:7,17,23 148:25 risk-taking (1) 185:14 RMR (1) 1:18 Rob (1) 167:17 ROBINSON (1) 4:7 role (4) 10:6 45:19,21 127:10 roles (1) 68:13 rolled (2) 63:19,20 rolling (1) 55:5 Ron (7) 10:11,13 19:10 23:3 135:2 183:18 192:14 room (4) 9:21 10:4,11 64:20 rooms (1) 64:6 routine (3) 12:8,10 70:16 routinely (1) 86:24 rules (6) 81:2 90:2,13,16 124:11 128:9 rumors (1) 77:8 run (3) 10:14 91:25 121:3</p>	<p>running (1) 70:5 runs (2) 24:24 143:16 rusty (1) 158:4 R-A-D-H-A-K-R-I... 68:4 <hr/>S (3) 3:2 4:2 210:9 safe (1) 154:9 sale (2) 64:25 202:14 Salzman (2) 24:15 35:12 sat (1) 153:18 satisfactory (2) 34:18 39:14 satisfy (2) 69:17 187:16 Saturday (7) 53:8,11 78:14 179:24 179:25 180:2,15 saw (9) 25:19 62:7 116:24 129:9 151:7 153:10 155:4,7 156:25 saying (4) 125:5 160:9,12 191:5 says (8) 111:7 121:25 144:19 148:11 150:9 175:21 188:4 196:4 SC (3) 170:9 172:6 210:16 scale (4) 36:11 42:11,12 137:16 scenario (1) 87:13 scheme (1) 32:10 SCHILLER (1) 3:8 scrambling (1) 54:6 scrutinized (1) 93:13 se (2) 14:4 78:18 second (16) 39:21 72:24 75:15</p>	<p>81:5 103:16 107:24 109:24 114:3,13 142:22 149:11 150:8 169:16 170:3 175:24 182:6 secondly (1) 38:20 secure (7) 26:25 62:25 63:5 82:11,25 148:4,5 secured (67) 51:21 77:25 79:8,18 80:3,9,12 81:16 89:11 90:14,14,19 91:8 92:12 93:12,17 93:24 94:10,23 95:3 95:14 96:7,16 97:10 97:17,25 111:8 112:7,11,14,17 113:23 114:7,17 116:12,21 117:18 118:4,17 120:16 123:13 124:12 128:3,17 129:23 130:12,18 131:7,21 132:13 133:10,20 151:16 152:20 159:18 164:19 165:8,13 166:6,18 167:2,9 169:13 171:9,18,21 176:6 securing (1) 127:23 securities (1) 110:19 security (3) 148:3 157:13 176:21 see (31) 75:17,24 77:17 78:4 81:15 93:16,23 98:4 99:10 101:3,7 102:25 103:17 104:3 108:6,11 111:12 119:12 121:25 144:17,23 145:25 148:7,9,13 149:12 150:8 157:6 173:18 177:15 191:4 seeing (2) 175:9,14 seeking (13) 25:15 55:20 64:2 108:17 109:25 119:16,19,19,22 120:4,12 125:11</p>
--	---	--	--	--

<p>128:23 seen (13) 58:8 121:5 143:4,7,9 153:7 155:6 156:22 157:3 172:9 175:6,8 175:13 seg (19) 85:19 86:16 94:10 95:2,13 112:19 113:23 124:12 128:17 130:18 131:6,21 132:13 133:20 151:15 159:18 164:18 166:6 167:2 segregated (73) 77:24 79:8,13,13,20 80:3,7,11,21,22,24 81:6,8,17,22 82:5 82:19 83:17 84:20 85:14 86:8,21 87:5 88:5,11,15 89:4,19 90:19 91:8 92:12 93:12,17,23,24 94:23 96:6,16 97:10 97:17,25 110:19 111:8 112:6,11,15 112:17 114:7,17 116:12,21 117:17 118:4,17 120:15 123:13 128:3 129:23 130:12 133:9 151:9 152:19 165:8,12 166:17 167:9 169:12 171:9 171:18,20 176:5,15 177:6 segregation (3) 80:25 88:13 113:13 self-effectuating (1) 141:15 send (1) 102:3 sender (1) 177:15 sends (1) 101:4 senior (1) 150:9 sense (10) 15:13 32:8 46:3 62:18 77:10 159:5 162:4 177:9 185:13 203:13 sent (10) 101:4,9 102:6,10</p>	<p>152:9 153:16 173:12,14,19,23 sentence (22) 34:4 37:11 75:15 77:13,20 78:6 79:7 108:25 111:6,15 115:13 117:20,24 118:14,25 119:12 119:15 145:14,15 150:9 160:19 162:8 separate (12) 47:23 69:24 79:19 84:12 89:5 112:16 113:24 114:23 189:11 190:25 202:13,16 separately (1) 46:2 separation (1) 45:22 September (46) 6:16 7:3,8,18 10:22 11:22 18:2 31:23 34:3 45:8 47:9 48:19 49:12 50:16 51:3,10 52:10,10 53:11 59:9 63:22 65:3,14 66:2 70:11 91:16 101:6 127:11 132:12 143:22 145:2 146:4 147:22 153:15 155:19,20 166:16 177:20 186:7 187:2,24 188:5 191:9,11 204:2 210:17 series (4) 127:14 192:11 195:15 204:18 set (6) 46:4,7 126:18 154:23 209:11,20 settlement (2) 51:23 157:14 shared (3) 135:6 145:11 193:12 sharing (1) 77:14 shortfall (6) 55:8 57:16 110:10 118:3,16 200:13 shortfalls (1) 55:18 show (1) 91:7 shown (2)</p>	<p>170:6 207:12 shut (1) 84:11 side (7) 53:20 64:18,18 141:25 142:2,4 168:23 Sidley (1) 52:7 sign (5) 103:8,13 123:6 186:19,24 signature (4) 103:7,9,10 123:4 signed (6) 14:17 58:24 103:4 120:11 153:13 187:6 significance (2) 180:6,7 significant (7) 40:20 65:20 78:20 79:21 114:22 180:14 185:11 significantly (3) 44:17 184:6,7 Signing (1) 103:11 siloed (2) 144:10,11 similar (12) 33:16 38:4 42:22 44:14 51:15 57:4 62:22 81:21 87:18 101:20 154:23 179:4 similarly (1) 62:20 simplify (1) 41:14 simplistically (1) 186:10 simply (6) 33:3 68:25 88:6 115:6 125:11 196:11 Singapore (2) 139:15 205:7 single (6) 28:20 179:9 194:11 194:15,16 195:7 SIPA (4) 3:14 5:12 134:4 177:21 sir (169) 5:20,21 6:13,19 7:20 8:7,12 9:4,9,12,17</p>	<p>10:17 12:6,18,25 13:17 14:8,12,22 15:6,16,25 16:14 17:13 18:6,24 19:8 21:10,22 22:6,17,22 23:6,22 24:5,13 25:8 27:25 28:18 29:9 30:15 31:6,14 31:21 32:3,8 33:6 33:15 34:23 35:9,17 37:10,16 38:11 39:11 40:2,13 41:7 42:8 46:18 51:7 52:8,16 53:2,9,20 56:3,24 58:13 59:11 63:20 64:14 65:5 66:22 67:17 69:5,15 71:25 73:20 78:8,23 79:8 84:18 87:17 89:15 91:3 93:13 95:6,12 96:15 100:21 102:9,24 103:7,17 104:13 105:14 107:3 117:8 117:18,23 118:14 119:3,15 122:9,23 123:3,20 125:24 126:24 127:21 128:7,15,22 129:14 129:24 130:20 131:5,13,20 133:25 134:16 143:8 145:7 145:22 149:10,15 149:23 150:15 151:3 152:17 153:8 154:9 155:5 156:14 156:23 157:9 159:15 160:18 172:12 173:3,12 176:3,12 182:7 183:15 184:2,8,21 185:4,18 186:15,20 187:22 189:3 190:3 190:24 194:6 195:20 196:9 197:9 198:19 199:10,18 200:3 201:12 202:4 202:12 203:12 sit (1) 74:7 sitting (8) 20:8 37:3 64:5 73:12 102:5 104:19 125:23 175:13 situation (4) 80:5 194:18 199:16</p>	<p>201:9 situations (7) 78:11 90:15 137:6 138:2 140:22 141:18 201:7 size (13) 17:18,22 26:13,24 27:8 35:22 42:8 61:9,10,23 62:6,16 184:4 Skadden (3) 24:17,19,21 slow (1) 137:10 slower (1) 29:14 small (6) 32:11 42:20 43:14 81:24 82:14 185:15 smaller (1) 44:17 smallest (1) 44:18 smoothly (1) 24:11 snapshot (2) 91:19 112:13 somebody (4) 54:8 67:25 68:10 153:17 somewhat (4) 14:13 28:8 44:10 74:21 soon (1) 47:13 sophistication (1) 29:12 sorry (32) 18:21 19:20,20 36:23 51:12 88:21 96:5 99:19 103:5 106:4 107:8,24 109:9 113:9 115:9 118:9 126:14 129:20 132:2 138:14 142:3 142:5 149:19 157:10 167:12 169:15 173:25 181:23 192:3 200:11,24 205:6 sort (26) 8:21,23 15:23 23:8 25:23 27:14 39:15 42:10 54:6,10 57:23 64:9 76:15 84:10 98:5 100:3 133:21</p>
---	--	--	--	--

140:18 144:8 172:24 176:7 180:8 189:15 197:6 199:15 206:12 sorting (1) 172:25 sought (1) 129:10 sounds (1) 68:5 source (1) 124:24 sources (1) 200:15 SOUTHERN (1) 1:3 speak (2) 70:22 75:12 speaking (5) 21:8 27:11 30:20 87:14 143:20 speaks (2) 125:7 144:5 specialty (1) 68:19 specific (10) 12:17 35:25 59:3 63:21 66:8 75:10 93:10 94:16 114:15 147:10 specifically (17) 12:20 30:4 51:23 54:9 58:14,18 90:25 94:22 97:20 116:4 122:12 127:4 130:2 132:7 134:12 153:25 194:14 specifics (2) 101:22 134:22 spell (1) 35:14 spelled (1) 68:6 spelling (1) 67:25 spending (2) 40:21 148:19 spent (1) 163:21 split (1) 45:24 splitting (1) 45:16 spoke (4) 29:16 43:16,21 73:17 spoken (4)	23:25 52:5 67:24 153:23 sporadic (1) 66:21 SS (1) 209:4 Stack (6) 9:19 143:18 192:8,10 192:16,23 Stack's (1) 143:16 staff (1) 18:3 stage (1) 26:19 stand (2) 189:22 190:6 standing (2) 53:15,16 standpoint (1) 185:14 stands (1) 77:15 start (2) 8:13 78:6 started (6) 8:7,23 16:19 23:7 31:22 129:19 starting (3) 37:24 127:11 181:21 State (4) 2:12 208:2 209:3,8 stated (6) 16:11 77:4 127:22 137:25 138:8 144:2 statement (7) 36:12 37:10 114:5,8 115:5 116:20 125:22 STATES (1) 1:2 status (1) 54:25 statutory (1) 81:24 steadily (1) 8:22 stepping (1) 188:8 steps (5) 44:12 197:25 199:10 199:18 205:21 stick (1) 182:24 Sticking (1) 107:23	stock (1) 31:10 stood (1) 92:5 stop (2) 89:20 91:13 stopped (1) 65:22 strategy (1) 162:12 Street (3) 3:5,10 4:5 structure (3) 88:10 90:11 122:18 struggling (1) 165:18 stuck (1) 141:2 stuff (1) 89:25 subject (6) 127:17 139:21 175:2 175:20,21 207:11 submitted (2) 5:15,24 submitting (1) 117:15 subpoena (1) 170:8 Subscribed (1) 207:15 subsequent (1) 46:21 substance (13) 6:25 11:9 13:22 26:2 44:3 48:23 59:17 131:18 132:24 150:20 152:12 154:6 182:17 substantial (8) 50:11 54:20 65:22 77:5 80:7 136:16 180:18,19 substantially (4) 151:5,8 153:13 155:8 substantive (1) 145:15 success (1) 137:20 successful (2) 22:22,24 sufficiency (7) 116:12,21 123:12,21 124:25 125:5,8 sufficient (23) 62:25 63:4,14 96:17	97:18 111:8,9 112:6 112:14,24 113:23 114:7,17 117:17 124:8,15 125:14 129:6,7 149:7 152:19 182:5 184:19 suggest (1) 100:14 suggested (1) 101:24 Sullivan (23) 4:3 6:14,18 7:10 9:7 9:11 11:14 14:10 45:12 49:6 53:4,6 102:2 117:10,16 123:11,20 124:20 124:22 125:13 132:18 160:4 170:7 Sunday (2) 7:3,8 supersede (1) 122:25 supervising (1) 69:8 support (2) 5:15,24 supporting (3) 127:25 166:22 198:10 suppose (2) 85:20 130:3 supposed (4) 89:22 99:24 100:11 139:10 sure (61) 8:11 9:20 11:6 13:25 15:18 24:11,20 26:15 32:25 33:3 40:25 43:4 44:11 46:21 47:2,3,14 48:11 51:21 53:15 55:6 56:4 59:4,16 65:21 68:22 69:9 70:17 72:4,6 73:9 73:19 74:4,7 76:5 83:14 85:22 98:14 99:12 100:6 102:7 106:5 116:19 117:5 124:15 128:18 163:18 167:12 169:6,8 171:14 173:8 174:10 176:2 176:9 189:14 195:17,25,25 196:2 197:24 surmise (1)	124:12 surprise (1) 25:5 surprised (2) 154:22,25 surprising (1) 81:12 swallowed (1) 200:21 swings (1) 184:13 sworn (3) 5:4 207:15 209:12 syntax (1) 118:10 systems (2) 76:9,16 <hr/> T <hr/> T (3) 209:2,2 210:9 TA (1) 58:18 TAA (4) 188:18 189:5,8,10 table (1) 76:22 take (42) 5:13 8:2 12:8,11,11 19:21 30:25 47:12 48:8 49:24 55:2 56:2 69:25 86:7 87:16 88:2 90:5 98:12,20 102:15 114:21 116:6 121:4 129:13 143:3 146:11 147:19 150:16 156:13 168:11 169:17 172:8 175:5 178:9 180:25 181:8,25 185:15 187:17 188:9 205:21 206:13 taken (13) 48:12 73:8 77:8 98:15 136:18 138:2,3 142:23 168:13 174:11 198:2 199:11,19 talk (5) 22:2 52:3 91:14,15 144:3 talked (3) 57:5 166:10 198:4 talking (11)
--	--	---	--	---

53:3 83:15 95:18 117:14 141:24 195:2 202:4 203:23 203:24 204:9,13 task (1) 27:6 tasked (1) 46:6 Taylor (2) 24:24 35:12 team (8) 27:19,21 45:25 145:12 162:11 163:21 185:14 192:24 technical (4) 75:23 76:7 78:10 79:5 technically (2) 110:7 143:16 telephone (3) 7:8 23:22 75:20 tell (41) 7:19 17:16 18:11 29:19 30:6 41:11 42:13 45:6 53:23 54:11 56:13 62:10 68:12 71:12 73:5 79:9 89:15 96:24 100:23 101:18 104:19 111:14 112:3 114:8 122:11 125:11,22,24 126:11 127:9 128:25 134:15 138:9,19 172:9 175:11,15,21 186:4 188:17 189:3 term (10) 58:6 95:17 106:15 117:13 149:23 161:7 171:13,15 177:11 197:14 terms (15) 27:4 43:4 56:21 79:4 111:19 112:14 117:23 126:21 144:9 145:17 161:13 163:14 172:17 197:4,6 tested (1) 80:4 testified (24) 5:4 33:24 38:7 46:13 47:3 49:9,13 59:5 60:2 96:21 106:8 128:4 143:23	157:11,24 159:10 165:6,11 169:21 176:3 178:20 181:22 196:16 204:12 testify (1) 124:23 testimony (30) 14:19 47:5 55:10,12 57:7,13 60:7 116:19 134:5 158:7 160:15 163:17 164:11 165:17 169:6,9 176:6 182:7 183:3 184:25 185:4 187:3 187:21 188:2 189:4 194:2,9 196:11 207:9 209:13 thank (20) 18:21 19:21 84:15 86:12 100:17 107:22 118:23 120:19 145:20 147:2 152:7 156:9 164:10 170:25 173:16 178:7 189:25 192:6 205:2 207:2 Thanks (1) 151:21 theoretically (2) 57:18 92:7 thereunder (2) 111:11 118:20 thing (4) 34:21 57:24 73:6 189:10 things (11) 31:12 32:11 70:18 71:21 104:9 120:2,5 132:24 136:10 140:6 166:13 think (152) 8:4,17 9:13 14:20 15:17 18:20 19:9 20:22 21:23 25:22 28:9,11 29:11,24 31:17,24 33:24 35:19 36:10 40:19 42:5,10,19 43:21 45:9 46:8 48:18 49:15 50:17 51:15 54:5 55:13 57:21 61:13 62:3,5,8 63:3 63:18,24,25 73:6 74:17 76:2,9,15	79:2 80:5 82:9 83:13 84:15 85:10 86:11,20 87:12 88:17 89:6,12 90:4 91:13 95:22 96:21 101:11 106:7 111:16 114:19 116:18 117:6,9,13 117:20 129:4,15 130:16 132:6 135:6 136:6,8,11 137:19 139:8 141:14,14 142:15 143:9,16,17 144:7,7 145:9 146:10,10,15,21 147:7,12,21 150:23 152:2,4 157:8,11,25 158:3,5 159:9,9 161:5 162:23 163:19 164:10 165:4 170:12 171:15,24 174:15 174:20 175:13 176:7,21 177:9,19 178:11 179:25 180:7 181:9 182:4 182:20 185:10 186:10 187:25 188:23 189:12,13 189:25 190:25 191:15 193:9 197:15,23 199:13 199:15,22 200:2 201:8,16,21,22 202:18 205:16,18 206:3 thinking (2) 52:24 146:22 third (12) 16:22 99:16,17 100:11 102:25 110:13 133:3 140:12 144:15 150:22 182:18 191:25 third-party (1) 137:21 thought (6) 27:3 36:4 69:25 103:5 184:16 204:11 thoughts (1) 174:10 three (17) 6:3 35:16 99:20 102:15 108:22 109:6 110:22 111:3	122:13 148:7 160:19 161:22 162:9 163:6,24 181:2,8 thrown (2) 95:2 96:10 Thursday (4) 25:9 51:18 52:9,22 tied (2) 198:10 199:15 Tim (4) 9:19 143:16,18 192:8 time (83) 7:4,5,11 11:20 13:6,7 13:9 14:17 18:22 22:12 23:5 24:19,21 29:15 32:11 34:11 40:21 42:5 48:10,20 50:17 51:9 56:18 59:14 60:14 61:7,15 61:19 62:11,13 63:6 65:13 66:11 77:5 82:8 88:16 91:2,20 91:25 92:18 93:10 94:11 95:4,11 96:14 96:23 102:13 111:17 112:14 113:15 118:22 129:18 130:20 131:14 132:7,11,20 134:25 136:10 143:17 147:5,24 148:4,20 149:16 153:10 155:4,6 156:25 159:12 162:16 164:14,17 173:3 178:12 180:17 183:24 185:5,24 186:12 203:24 207:4,6 times (3) 85:4 95:3,9 title (1) 10:6 today (13) 5:14 18:23 20:8 37:4 46:13 73:13 74:8 102:5 104:19 125:12,24 168:2 175:13 Tokyo (2) 198:3 199:9 told (13) 34:16,18,25 35:10,11 36:18 53:21 60:20 71:16 163:12	191:18,20 192:16 top (3) 122:3 170:10,15 topic (1) 64:15 topics (1) 94:6 Toronto (1) 66:24 total (4) 96:11 97:17 112:23 144:21 touch (3) 72:24 114:23 141:4 track (1) 164:18 tracked (1) 171:19 trade (16) 20:15,16,23,24 43:22 44:5,14 50:9 79:10 79:16 91:21 110:18 200:25 205:9,13,14 traded (1) 50:7 trading (20) 31:11 39:17 50:13,15 54:22 55:11,13 57:8 60:4 61:17 66:17 76:11 83:18 87:24 105:5 108:19 109:12 112:5 140:16 141:21 traditional (1) 176:20 train (1) 142:5 transaction (43) 10:16 11:15,17,20 32:3 43:2 47:10 50:20 51:10 53:20 56:24,25 65:15 66:14 67:9 70:6 71:17 72:20,23 93:20 96:15 105:24 122:19 132:11 138:8 140:8 146:11 146:15,25 148:6 150:15 151:4 153:14 155:8 161:14 162:7 166:2 166:4,16 169:24 184:2 185:6 206:5 transactions (1) 148:12 transcript (1)
--	---	--	--	--

207:11 transfer (36) 12:22 13:3 58:4 67:12 71:23 72:25 73:21 101:2,15 103:24 104:5,10 108:18,22 109:25 119:6,10 126:20 133:9,25 134:2,13 156:11 159:5 161:20 163:22 169:24 172:15 186:17,19 187:20,23 195:21 196:5,25 199:12 transferable (2) 109:3,7 transferred (13) 74:3 105:16,20 106:12,23 107:5 109:21 160:23 166:18 169:13 196:15 197:19 201:17 transferring (2) 128:18 165:7 transfers (2) 119:11 156:3 transmitted (1) 28:12 transparent (1) 24:10 transpire (1) 63:10 transpires (1) 63:9 transpiring (1) 67:8 treated (2) 195:21,24 treatment (1) 105:22 trenches (2) 164:8,9 TRICIA (1) 3:12 tricky (1) 202:8 tried (2) 148:21 190:25 Trish (3) 19:21 168:24 173:16 Trish's (1) 125:9 true (6) 63:15 112:25 113:22 205:3 207:10	209:13 trustee (13) 3:14 5:12 127:19 128:24 129:10 134:4 162:14 167:7 167:7 177:18,21,23 177:25 trustee's (1) 166:25 try (13) 19:24 22:18 46:3 106:7 118:9 142:7 145:8 163:10 165:5 173:17 182:21 189:13 203:13 trying (12) 76:3 96:3 145:18 172:16,23 181:11 183:13 190:10 192:14 201:15 202:6,8 Tuesday (1) 70:25 turmoil (1) 77:5 turn (5) 75:15 102:23 103:16 144:15 185:8 turning (7) 24:5 39:7 75:13 89:11 101:3 133:24 149:10 two (35) 24:14 29:4 33:9 38:14 53:25 67:7,11 73:15 80:15,18 81:25 83:24 85:21 88:23 100:13 107:25 108:24 110:22 111:6 114:11 115:21 122:2,16 145:23 149:11 170:18 175:3,15 180:25 181:8,25 189:11 200:9,12,15 Twofold (1) 72:22 type (5) 25:17 109:24 116:8 176:21 188:13 types (3) 47:25 62:4 108:23 typically (3) 41:18 82:18 91:24	UCC (1) 176:20 ultimately (3) 31:3 146:20 187:9 Um-hum (1) 144:18 unable (8) 17:2,21 36:5 39:23 75:21 76:25 189:3 191:7 uncertainties (1) 38:21 uncertainty (5) 17:4 98:6 178:21 180:9 181:10 undefined (1) 171:12 underlining (1) 156:17 underlying (1) 14:24 underpin (2) 115:3,5 understand (28) 14:16 21:15 28:25 30:2 32:25 33:6 36:14 55:12 59:6 64:24 65:4 79:23 84:15 86:11 111:7 114:6 117:6 118:2 118:15 123:16 132:3 142:14 145:7 160:17 164:10 175:12 189:20 195:17 understanding (59) 10:17,23 12:25 17:20 25:19 35:7,9,21 40:5,13 48:15 58:2 59:10 70:13 72:21 84:18 85:23 92:10 95:12 97:15 105:2 105:12,19 106:22 106:25 107:2 108:16 116:20 117:17,24 118:3,22 123:12,21 130:17 130:21,25 138:23 139:3 146:3 149:15 149:22 157:21 160:21 161:18 163:5,13 164:2 165:22 166:2,3,23 167:15 176:12 189:17 195:19 201:6 204:5,7	understood (10) 35:24 55:9 57:6 124:7 150:24 169:25 186:21 187:5 188:11 190:4 undertaken (1) 56:10 undertaking (1) 133:17 unduly (1) 185:3 unit (1) 162:5 UNITED (1) 1:2 unknown (4) 63:10 98:7,8,10 unlimited (1) 87:4 unload (1) 181:2 unnamed (1) 37:9 unremembered (1) 37:9 unusual (1) 57:21 update (3) 72:19,23 122:16 updated (1) 123:10 up-to-date (1) 67:8 use (12) 21:10,12 81:2 86:7 117:6,13 161:7 164:3 171:12 177:7 177:11 197:14 users (1) 147:15 usual (1) 72:4 usually (3) 24:2 92:3 177:11 U.K (8) 66:23 73:3,7,24 74:2 74:10 139:3 200:3 U.S (48) 17:11 19:17,17 20:3,4 20:5,6,15 21:13,22 22:5 23:12,22 29:17 30:6,23 44:6 79:10 79:17 89:13,18 104:17,22,25 105:3 105:5,8,11,15 106:9 106:11 127:23	128:9 133:14,15,19 133:25 134:8 135:11 136:24 138:12 143:19 145:24 146:5 165:24 194:7,14 205:24 <hr/> V <hr/> vague (10) 8:9 13:6 22:11 37:12 74:21,24 82:7 161:7 171:12 183:23 vaguely (1) 13:13 vagueness (5) 9:6 17:4 95:17 106:15 183:16 value (2) 119:7,11 variation (2) 41:22 86:15 variety (2) 146:19 166:13 various (5) 58:16 62:11 95:3 111:20 166:20 version (1) 99:21 versus (6) 16:5,5 60:5 92:5 96:12 202:7 view (7) 69:11 129:4 154:10 154:15 156:7 181:22 184:9 virtually (1) 49:7 VIX (11) 48:5 78:12 179:23 180:13,16 182:9 183:22 185:2,7 191:19 192:15 volatile (3) 92:9 148:24 184:12 volatility (8) 38:21 50:10 54:20 91:17 98:6 180:17 180:17 184:12 volatility-based (1) 48:6 voluntarily (1) 199:4 V-I-X (1) 48:5
---	--	--	--	---

W	94:24 95:15 97:16	woman (1)	X (4)	209:20
waiting (1)	127:11 129:21	43:19	1:4,10 210:3,9	1.20 (1)
53:12	147:5,17,21,25	wondering (1)	Y	81:25
walk (1)	149:2 150:14	177:16	Yeah (2)	10 (2)
187:11	163:21 166:16	word (9)	118:9 157:24	3:10 101:6
want (23)	179:3 193:13	40:19 55:13 85:23	York (21)	100 (3)
15:23 29:21 48:8 69:8	198:23 204:2	91:14 99:21 132:4	1:3,14,14 2:8,8,12 3:6	103:25 144:20 196:6
70:16 76:4 82:16	weekend (16)	164:2,6 173:25	3:6,11,16,16,21,21	10004 (2)
83:14 98:12 116:19	49:19 50:5,6,8,12,18	words (7)	4:6,6 20:16 208:2,3	3:16 4:6
126:14 132:3	51:2,22 53:23 57:9	115:12 117:6 145:8	209:3,5,8	10010 (1)
133:18 150:5 164:3	57:19,20 65:25 66:7	146:10 148:8	Z	3:21
168:10 169:5,8	157:15 188:10	160:13 165:19	zero (1)	10017 (1)
170:19 171:6	weeks (5)	work (9)	81:25	3:6
195:16 197:24	70:5 140:7 181:2,8,25	63:25 65:9,24 68:15	zoom (1)	11 (3)
200:24	went (7)	68:18 90:6,10 93:19	190:2	1:6 34:2,9
wanted (7)	8:10 18:10 23:8 24:11	175:25	\$	120 (1)
51:20 55:2,6 68:22	71:22 136:22 179:3	worked (1)	\$1.6 (2)	210:13
73:9 128:11,18	weren't (5)	45:23	36:8,16	12207 (1)
warm (1)	15:6 49:21 76:12,13	working (7)	\$250 (1)	3:11
205:8	98:10	11:15 46:2 65:16	144:22	125 (1)
wasn't (8)	WHEREOF (1)	101:23 116:23	\$28 (1)	4:5
14:3,3 21:25 25:16	209:19	136:10 162:11	183:22	126 (1)
33:8 46:10 106:5	willing (2)	works (2)	0	210:14
158:9	40:15 137:23	80:13 175:22	00003451 (1)	14th (5)
Wasserman (6)	winners (1)	world (8)	172:6	6:17 7:3,8 65:14
67:20 68:13,17 71:8	36:10	16:11 17:5 89:11	00003451-53 (1)	66:13
72:14 101:9	wire (1)	136:17 137:11	210:16	15th (44)
Wasserman's (1)	57:20	140:15 144:14	00009298 (1)	6:16 7:18 9:25 10:18
68:18	wish (1)	194:10	126:8	10:22 12:6,20 13:8
wasting (1)	208:4	worries (1)	00009298-301 (1)	16:3,5,14 18:2,6
162:16	wishes (1)	30:14	210:14	25:5,8 33:24 45:7
way (27)	79:16	worry (1)	00009653 (1)	46:18,24 47:9 49:12
13:16 19:5 23:18	withdraw (2)	30:12	121:2	51:9 57:3 64:14
30:15 33:13 38:17	88:15,17	worse (1)	00009653-65 (1)	70:11,24 91:3,16
48:15 63:12 68:6	withdrawn (14)	142:13	210:13	93:13 94:12,24
81:10 106:7 123:10	7:20 40:6 52:2 60:10	wouldn't (16)	00009676 (1)	95:15 97:16 143:22
130:17,21,25	104:14 115:3,24	25:4 28:17,24 32:17	98:25	145:2 146:4,16
131:12 142:7 156:4	116:9 130:10 132:9	55:8 71:5,10 81:11	00009676-88 (1)	147:4,22 150:14
160:12 165:5	164:15 169:7 185:3	91:19 92:3 114:24	210:12	166:16 179:4
172:15 173:17	187:20	135:17 141:16	00116806 (1)	193:14 204:2
185:10 196:12	withholding (1)	150:5 179:19	168:17	16th (7)
197:9,17 209:17	78:17	195:11	00116806-07 (1)	14:14 16:5 59:8 63:12
ways (1)	witness (42)	wound (1)	210:15	63:22,25 70:25
146:19	4:4 5:3 6:24 11:6	83:10	07 (1)	167 (1)
week (61)	13:21 19:23 48:11	write (4)	168:18	210:15
8:20,22 13:16 18:6,10	48:23,25 51:12	75:19 110:3 172:20	08-13555(JMP) (1)	17th (5)
23:8 25:8 39:20	59:16 89:22 90:4	172:22	1:7	14:14 16:6 34:2 59:8
40:4 42:6 45:7,10	98:14 99:5,12,16,18	writing (2)	1	63:13
45:13,16 46:24 47:8	99:21 100:4,10	118:14 152:17	1 (3)	171 (1)
47:15,16 49:11	107:8,18 121:14,19	wrong (2)	1:15 2:2 153:6	210:16
51:17 57:3 63:19,25	131:17 132:2,18,23	150:6,6	1st (1)	174 (1)
64:10,11,21 65:21	150:19 154:5 163:9	wrote (4)		210:17
66:18 67:17,23 70:5	176:10 182:16	114:18 124:7 151:23		178 (1)
70:8,10,10,15 72:12	188:2,20 206:15	196:14		210:7
72:19 78:15 91:7,16	207:8 209:10,14,19	X		18 (1)
91:18 93:13 94:8,11	210:4			56:12

<p>18th (7) 31:23,25 32:2 48:18 52:9 188:6 193:10 181 (1) 210:6 19 (1) 210:17 19th (32) 50:3 52:10 65:3,7 101:6 157:4 158:11 175:2 177:20 185:22 186:2,4,6,22 187:5,15,24 188:5,7 188:13,18 189:5,22 189:24 190:6,8,18 191:8,11,14 193:10 197:20 190.01W (2) 108:9 109:15 190.06E2 (1) 119:2 <hr/>2<hr/> 20 (1) 129:20 20th (11) 49:19 51:2 53:8,11 57:11 65:25 78:14 155:18 179:25 180:2 185:24 2008 (11) 10:15 48:19 59:9 143:22 153:15 155:20 186:7 187:2 187:24 191:12 210:17 2010 (3) 1:15 2:2 209:20 21st (6) 49:19 51:2 57:11 65:25 179:24,24 22nd (18) 11:21 32:3 47:10,15 50:15 51:11 57:4 65:15 66:14 93:21 127:11 129:16 132:12 153:15 155:20 184:2 187:2 206:5 222 (1) 3:5 24 (2) 50:9 91:21 24-hour (1) 102:13 25 (1)</p>	<p>154:20 273 (1) 158:3 28462 (1) 1:19 <hr/>3<hr/> 3 (1) 175:2 3:30 (1) 91:24 3:31 (1) 207:6 30 (1) 180:21 30.7 (2) 81:15,16 3453 (1) 172:7 3897 (1) 170:9 3905 (1) 170:9 <hr/>4<hr/> 4 (1) 91:24 4d (1) 81:24 4th (2) 3:10 173:19 41st (1) 3:5 <hr/>5<hr/> 5 (2) 210:6,10 51 (2) 3:20 156:12 556 (1) 143:3 <hr/>6<hr/> 6th (1) 173:20 658A (2) 5:17 210:10 658-A (2) 5:20 75:14 659-A (9) 98:16,20 100:8,20 102:17 120:11 123:2 152:5 210:12 660-A (6) 120:21,25 123:4 152:2,5 210:13</p>	<p>661 (1) 152:4 661-A (5) 126:3,7 152:3,5 210:14 662 (1) 167:23 662-A (5) 167:19,24 169:5,9 210:15 663-A (4) 171:25 172:4 174:14 210:16 664-A (3) 174:22,25 210:17 <hr/>7<hr/> 7th (1) 8:4 74 (1) 158:3 <hr/>8<hr/> 8 (1) 186:25 8:30 (1) 2:3 84 (2) 158:3,5 <hr/>9<hr/> 9301 (1) 126:9 9654 (1) 122:2 9662 (1) 121:13 9665 (1) 121:3 9688 (1) 99:2 98 (1) 210:12</p>		
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